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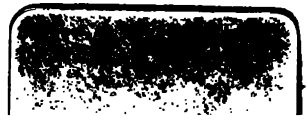

SOME REMARKS

UPON THE

NATURE AND ORIGIN

OF

THE TITHES IN LONDON,

WITH

THE VIEW OF SUGGESTING A REMEDY FOR THE PRESENT INADEQUATE ENDOWMENT OF MANY POPULOUS PLACES, BY SIMILAR PAYMENTS OUT OF HOUSES.

WITH

AN APPENDIX.

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TO

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REGIUS PROFESSOR OF HEBREW IN THE UNIVERSITY OF CAMBRIDGE,
PREBENDARY OF BRISTOL, AND RECTOR OF BARLEY, HERTS;

TO

THE REV. WILLIAM METCALFE, M.A.,

RECTOR OF FOULMIRE, CAMBRIDGESHIRE;

AND TO

THE REV. HENRY SOAMES, M.A.,

RECTOR OF THEYDON MOUNT AND STAPLEFORD TAWNEY, ESSEX,

THE FOLLOWING PAGES ARE,

(WITH THEIR PERMISSION,)

JOINTLY INSCRIBED,

WITH SENTIMENTS OF THE HIGHEST RESPECT AND ESTEEM,

AND IN GRATEFUL ACKNOWLEDGMENT OF THE AUTHOR'S PERSONAL

OBLIGATIONS TO EACH INDIVIDUALLY.

INTRODUCTION.

CONSIDERING the various plans which have been of late suggested, to remedy the grievous inadequacy of the endowments of the Church of England in many places, it might be deemed superfluous to propose to add another to the number, did not the present circumstances of the Church call for all the resources that can be brought to her aid. I must, however, beg that it may be distinctly understood that the reason for bringing the tithes of London so prominently forward at this time, is only to illustrate the present subject; and not with the least intention of opening the question of their final settlement, which has been practically effected: and having thus endeavoured to guard against any misapprehension on this point, I shall quote the following extract as introductory to the subsequent Remarks.

Brewster, *Collect. Ecclesiast.* p. 142, (after stating that the tithes in London were regulated by the award of the Lords, and which was sanctioned by the king, 27th Henry VIII., the citizens having refused to pay them according to the regulations formerly made, and which were sanctioned by papal bulls, under the pretence of fearing a *præmunire*), observes, "And again, where it is said that *those* payments shall continue only till some other order should be made by thirty-two persons which should be chosen by the King for making ecclesiastical laws; [and in the 27th Hen. VIII. c. 21, here referred to, the regulations are to extend to the realm of England. See the above

Collect. p. 136;] we must know, that in the 25th Hen. VIII. c. 19, when the clergy had submitted themselves to the King, and promised to make no canons nor constitutions, nor execute the same without the King's assent; it was enacted that thirty-two persons should be chosen by the King, of the Upper and Lower House, whereof sixteen to be of the clergy, and sixteen of the temporality; which should view and examine all canons and constitutions heretofore made, and such as they should judge worthy to abrogate, should be abrogated and made null; and the rest to stand and be in full force. But because nothing was done by the King according to this act, hereupon the like act was made in the 27th Hen. VIII., giving him the like power for three years; and because nothing was done within this time hereupon, anno 35th Hen. VIII. the like power was given the King during his life. Now in regard the King never did nominate any such persons for this work, therefore the act of the 27th Hen. VIII. continued still without alteration until the 37th Hen. VIII. *It is true,* that in the 3rd and 4th of Edward VI. the like power is granted to the King for three years, who thereupon nominated certain persons under the Great Seal, who compiled certain laws, set forth in a book called *Reformatio Legum Ecclesiasticarum,* wherein it is appointed that *both* in London and all other cities and great towns, the inhabitants should pay according to 2*s.* in the pound, (for their houses); but this profitable work was never published nor promulgated by the King's authority, and so took not the effect which was desired."

The enactment here referred to appears to me not to warrant this conclusion of its being intended to affect the tithes of London, then paid at the rate of 2*s.* 9*d.* in the pound; but merely to enjoin the payment of *personal tithes* according to a rate upon the rent of houses in other places, after the custom of the city of London, "and *where* no predial tithes of houses were paid;" but to this I must refer again. Brewster adds, "Now supposing the decree of

37th Hen. VIII. to be no act of Parliament, of which many doubt, and not without great cause, ... then no question the tithes must still be claimed by this act of 27th Hen. VIII. And here a question may arise, whether the King and his successors may still nominate thirty-two persons, by commission under the Great Seal, to make and reform ecclesiastical laws; and whether those thirty-two have power to make any other order such as they shall think fit for the payment of tithes in London as is appointed in this act, especially seeing all the power and authority which was given to King Henry by that act of 25th Henry VIII. is established in the King and his successors for ever, and every clause, sentence and proviso, is to be extended to him and his successors for ever, by an act of 1st Eliz. c. 1. These are two things which make it doubtful, which if they be removed, then no question but the King may nominate such persons, who, by his assent, may legally settle the tithes of London *and of all other cities;* and so may determine that which is now one of the greatest grievances and blemishes of the church."

"It may be doubted whether this act of 27th Hen. VIII. c. 15, which refers the final ordering of this business to thirty-two persons, does intend *the* thirty-two persons which the King has the power to nominate, by virtue of an act made the same year, c. 19, or by virtue of an act 25th Hen.VIII.; for if the former be meant, then no doubt the power is extinguished, because it was only for *three* years, and is not revived by any act made since. If they mean those thirty-two which are to be chosen by virtue of the act of 25th Hen. VIII. c. 19, which act indeed, with every clause and branch of it, is to be extended to the King and his successors for ever; here a question may arise about the meaning of these words in the act, whereby it is said the King shall nominate thirty-two persons of the Upper and Lower House of Parliament. For if by the Upper and Lower House of Parliament be meant only the members of that

particular Parliament which was in the 25th Hen. VIII., then the question is, how such power can be settled in the King for succession, or how the King can nominate any such who are long since dead. But if by the Upper and Lower House be meant any Parliament in general, happening in the reign of any King, and if the act of 1st Eliz. c. 1. do so far extend the words and the sense of them, then no doubt but the King hath power, by the thirty-two persons, or the major part of them, finally to order the same business. The resolving of these doubts I leave to those who are interpreters of the laws," &c.

Upon this subject I shall only subjoin these observations of a highly respected clerical friend. " The act of 1st Eliz. c. 1. sets up in all its integrity the 25th Hen. VIII. c. 19, and enacted that it should extend to the Queen, her *heirs* and *successors*, as fully and largely as to the said King Hen. VIII.; and it still remains unrepealed and unfulfilled, for the canons of 1603 were not made under *its authority*, nor were those of 1640, wherein the statute of Hen. VIII. is expressly referred to; and, moreover, these canons were annulled by the 11th Charles II. *But* if it were admitted to be still in force, it is difficult to imagine that it would be allowed to touch *money matters*, even so far as to provide for the restoration of undoubted and ancient dues, and the Parliament would doubtless contend for the necessity of its sanction to such provisions."

Having made these introductory observations upon the intended legislative enactments for payments out of houses for the support of the clergy, contemplated in the reigns of Henry VIII. and Edward VI., I proceed now to the Remarks upon the Nature and Origin of the Tithes in London, with the view of suggesting a remedy for the present inadequate endowment of many populous places by *similar* payments.

SOME REMARKS,

&c.

"THE churches in London were by ancient custom of the City endowed with certain payments, issuing out of the houses of all the parishioners, called sometimes oblations and offerings, and sometimes tithes (for they had the name of tithes long before the time of Henry VIII., and were paid in some places quarterly, in others once at Easter), which custom having been used for many ages, and time out of mind in the said city, was confirmed and declared by Roger Niger, by some called Roger Niger de Beley, who was consecrated Bishop of London in the year 1229, (13th Hen. III.) and died at his Manor-house in Stepney, Sept. 29th, 1240, or 1241."—(From *Brewster's Collectanea Ecclesiastica*, pp. 2, 3.)

Nelson, in his "Rights of the Clergy in England," speaking of the support of those in London, p. 363, observes: "That the maintenance of the secular clergy in London before the Reformation, did consist chiefly in voluntary offerings and personal tithes, which were esteemed to be voluntary oblations, and *as such* received by the clergy, is affirmed by Sir Simon Degge; but it seems to me to be a mistake, for it is impossible that the law should settle a maintenance upon the country clergy, and leave those in London to be supported by the voluntary oblations of the people."

Burn, in his "Ecclesiastical Law," under the tithes of London, vol. iii. p. 551, states, that "in the several acts of the 27th Hen. VIII. c. 20; 32nd Hen. VIII. c. 7; 2nd and 3rd Edw. VI. c. 13; and 7th and 8th William III. c. 6, there is

a proviso that nothing therein shall extend to the city of *London* concerning any tithes, offerings, or other ecclesiastical duty, grown and due to be paid within the said city: because there is other order made for the payment of tithes and other duties *there*, which order is as followeth:—

"It appears by the records of the city of London, that Niger, Bishop of London, in the 13th Hen. III., made a *constitution in confirmation of an ancient custom formerly used time out of mind*, that provision should be made for the ministers of London in this manner; that is to say, that he who paid the rent of twenty shillings for his house wherein he dwelt, should *offer every Sunday, and every Apostle's day* whereof the evening was fasted, one halfpenny; and he that paid but ten shillings rent yearly should offer but one farthing; all which amounted to the proportion of 2*s.* 6*d.* in the pound, for there were fifty-two Sundays and eight Apostles' days, the vigils of which were fasted.

"And it appears by the book-cases in the reign of Edward III., that the provision made for the ministers of London was by offerings and obventions, *albeit* the particulars are not assigned there, but must be understood according to the former ordinance made by Niger."

This provision, then, constituted a settled maintenance for the clergy in London—as Mr. Nelson contends—in proportion to the rents of houses, but not however *as a compensation* for personal tithes, from which it was entirely distinct, as Lindwood expressly argues, who says, that the offerings as to the fifty-two farthings may be taken for a tithe of the rent of the house, *which*, he adds, is predial, and upon which tithes were due.

And he proceeds to state that these offerings were levied upon other festivals besides Sundays, (and thus amounted to a greater proportion than a tenth of the rent). *Not* as a compensation *in so far* for personal tithes, but because the clergy in London were not otherwise endowed with glebe, &c. as the clergy in the country were. This, he adds, "may be sufficiently gathered by perusing the said order," [of Niger,—but this part of it is not now extant].

Upon the same subject we find the following remarks in Brewster's Coll. Ecclesiastica, p. 10, (from Dr. Bryan Walton's

papers): "Nor is this a custom *peculiar to London alone*, for in divers cities and large towns there have been, and are, the like customs for offering or paying according to the rent or profit of houses; as in Canterbury, 2*s.* 6*d.* in the pound," [by an order of Archbishop Arundel, anno 1397].

"In Coventry, 2*s.* in the pound," [by an Act of Parliament made in the beginning of Queen Mary's reign. But I must refer to this again, as it by no means applies to the present case in the sense of an ancient custom.]

"In Battle, in Sussex, the like; and the like is now lately ordered by his Majesty's award in the city of Norwich, also in divers places adjacent to London.

"In Middlesex, Surry, Kent, and Essex, they pay after the rate of 2*s.* in the pound, which is the lowest I find in any place;" [but there was an Act passed in the 12th of Charles II. for the payment of 1*s.* at Royston, in Herts., and in confirmation, it is stated of a former voluntary contribution; but of this also I must speak again.] "And if we believe Coke in Dr. Grant's case (*Coke's Reports*, p. 11), in most ancient cities and boroughs there is some custom 'de modo decimandi,' as he calls it, for their houses, for the sustentation of the priest.

"And the prescription for 2*s.* in the pound of the rent of the house was held good, *because it might be a modus* in lien of the tithes of the land upon which the house was built.

"But that opinion mentioned in the report seems improbable, which makes the ground of that custom to be only this, *because* there might have been a predial tithe arising out of the ground whereon the house stands, and the parson ought not to lose his tithe because the owner builds upon the ground: for though this might be some cause *why a payment* should be issuing out of the *house*, yet this was not the *chief* cause, as plainly appears by the proportion paid, which no man can in reason think to be *only* the tithe of the profit which the ground might have yielded, but *also* of the house thereon built."

But, that I may not do injustice to this subject, I shall quote the observations of Lindwood at length, which appear to have arisen from their being considered as personal tithes, or as excusing from those tithes, which he concludes they did not.

His statemènt is as follows:

"QUESTIO.

"Quæro ergo quod dicemus de artificibus et negociatoribus Civitatis Londoñ q. ex ordinatione antiqua in dicta Civitate observata tenēnt: singulis d¯m'cis diebus et in principalibus festis et Sc'tor¯Apost. et aliorum quŏr. vigilie jejunantur offerre pro singulis decem solidis redditus domus quā inhabitāt unū quadrantem.

Numquid excusant. per h¯m¯di oblatione a personalibus decimis q̄ solvi debent ex lucro sui artificii vel negotiationis q. nŏ arguit.

Nam decima p¯dialis et personalis sunt decime omnino distincte et separate, sic q. in eis nō ht locū confusio.

Et hoc satis pt qr diversis respectib. debent. una vizt. p¯dialis respectu rei alia respectu industrie persone ex eo. c. pastoralis et c. ad ap¯licĕ.

Patet enim alia ratione qr decima p¯dialis debēt. Ecclesie infra cui' parochiam prædium situm est. p¯sonalis vero debēt. eccliē ubi p¯sona q̄ debet eas solvere audit divina et recipit ecclie sacra. 16, q. j. questi. 13, q. j. §. j.

Cum ergo verum sit q pensio que p¯venit ex domo vel habitatione est redditus p¯dialis ff. so. ma. l. divortio § in pensionibus, et de tali redditu debēt. decima ut nōt Hostien ex eo p¯venit.

Satis constat q. solutio unius nō liberat ab obligatione alteri.

Præterea jus parochiale 'sistit nō solum in decimis sed etiam in oblationibus sicut pt¯ex eo sup. rubrica ubi decime et oblationes ponunt, ut diverse.

Unde et quilibet fidelis tenēt in d¯nicis diebus et aliis festivis diebus offerre.

Et ad hoc cogi pōt p¯m 'suetuedinē regionis ut plane notat Hostien eo. ti: in summa § in q̄-bus. c. sed numquid allegat ad hoc de 'se dist. j. ois. Xp̄ianus et. c. si. q's.

Et illud intelligi dr' de oblatione corporali nō autem solum mentali.

Cum g' ordinatio ipsa talem redditum assignet eccliē sub nomine oblationis videt: quod non sit hāda talis oblatio loco decime maxime p¯sonalis.

Præterea ubi aliqui possèssione adheret onus certum ut sc.

aliquid p̄m. redditum illius possessionis offeret eam inhabitans sicut presupponit: in casu isto si possessio ipsa ad manus alterius venerit *etiam si Judeus sit*, tenebit ad solutionem oneris antedicti, ex̄de usuris, c. q̄. t. ad finem facit ad idem ex̄. e. c. de terris.

Talis namque redditus est p̄dialis.

Unde et Judei decimas p̄diales solvere tenent et etiam oblationes que de domibus sive possessionibus et a p̄sonis inhabitantibus eas solvi consueverunt. ut pt in jurib. p. alleg: non tum ex obligatione p̄sone sed rei.

Nam ad p̄sonales decimas non tenentur Judei ut notat doct. dicto C. de terris.

Et hoc verum per modum decimā. Cum ergo Judeus inhabitans talem domum tenet ad oblationes p. alios ibi habitantes fieri consuetas; non tunc tenet: ad solutionem decimarum personalium sequitur q'd talis oblatio non pot. nec debet computari in solutionem decimā personalium.

Preterea ordinatio p dicta indifferenter artāt. quoscunque inhabitantes sive sunt artifices vel mercatores vel q'vis alii. unde posito q^{d} domus aliqua inhabitet̄per talem qui non sit artifex nec negociator nec ullum lucrum acquirat si talis teneatur ad h' mōi. oblationes integre solvendas ut patet ex superioribus satis apparet q$_{d}$ talis oblatio non participat de decimis personalibus.

Preterea p̄supposito q^{d} talis oblatio succederet loco decimā personalium in parte vel in toto sequerentur quedam absurditates et inconvenientie.

Primo q^{d} ille qui non teneretur solvere decimas personales eo q^{d} nihil lucrat: per talem oblationem solverit illud q^{d} non debet et sic Eccliē reciperet commodum de damno alieno contra l. nam naturæ ff. de cōde indeb:—

Scdo sequeretur q^{d} mercator forsan in anno lucrans mille eo quod moraretur in domo cujus pensio non est forsan xx solid. nihil aut modicum solverit de suo lucro.

Ille vero qui inhabitaret domum cujus pensio esset x libr. dum nihil lucraret in anno solveret quod non esset solvendum, ut p̄dixi.

Nec obstat si dicas q^{d} oblatio q̄ fit diebus dominicis sit decima pars redditus qua decima deberet curat. contentari tan-

quā pro decima p diali sicut pt per naturam totius tituli de decimis.

Unde quicquid ultra hoc offerri in aliis solemnitatibus debet computari pro solutione decimarum personalium qr ut p̄dixi sic sequeretur qd nō astrict: ad decimas p̄sonales *eas* nihilominus solveret qd est et inconveniens.

Est et alia ratio quæ sequitur qr quilibet ecclesia parochialis habebit dotem unde ipsius curatus congrue posset sustentari ex. de. cens. c. j. de 'se dist. j. nemo 16, q. 7, pie mentis, et non solum *pro se* sed etiam aliis ministris ut pt in locis p̄dictis.

Patet exemplum in locis ruralibus ubi curati habent mansum cum certa gleba eis assignata et nihilominus ultra hoc habebunt decimas et oblationes sicut pt. d. c. j. de censibus.

Propterea ergo,

Ordinatum est qd Ecclesie dicte civitatis eo quod non sunt dotate ultra decimas redditus p̄diorum q̄ sumuntur per viam oblationis in diebus dominicis habeant 'similes oblationes in aliis sanctorum festivitatibus in recompensam dotis ipsarum Ecclesiarum prout satis collegi potest ex inspectione ordinationis p̄dicte.

Unde per ordinationem h̄ moi nō p̄nt curati excludi a decimis p̄sonalibus sicut pt ex premissis. (Lindwood, lib. 3, tit. de decimis, cap. Sancta Ecclesia, verb. Negociationum.)

The points, then, which Lindwood seems to maintain are these:—First, that the churches in London were originally endowed with the predial tithe of the rents of houses, which were taken by way of oblation on Sundays. And secondly, that similar oblations upon other festivals were in recompense of glebe, &c. Dismissing, therefore, the second of these, with which I am not further concerned, I shall confine myself to the *first* position, respecting the oblations upon Sundays.

It appears, then, that Lindwood considered these offerings as a *predial tithe* of the rent of the house or farm (*predium*), and which he affirms to be due. That *tithes of rent* were paid as early as the time of William the Conqueror, we find from Mr. Somner, who, speaking of Penygavel, a rent usually reserved and paid in money, says, "In the Conqueror's, and some succeeding king's charters, made to St. Augustine's Abbey at Canterbury, the present service occurs by the name

of Gabalum Denariorum, the tithe whereof, here excepted from these, was *elsewhere* granted unto other monks."—See *Selden's History of Tithes*, pp. 321, 330, 331.

The following are the notices of these tithes which I have been able to collect from Selden.

The first is from the Lives of the Abbots of St. Augustine's, and occurs in a grant from William the Conqueror, 1070, of *all* the tithes of two manors, "excepta decima mellis et gabali denariorum."

Again, W. Peverell gives to the monks of Hatfield "decimam denariorum meorum de Meldona."

Out of the Chartulary of the Abbey of Boxgrave, in Sussex, about the year 1180, William St. John gave for the maintenance of a fourteenth monk "decimam gabalorum suorum" of several places.

And the same William, in another charter, adds, "Et reddidi decimam gabalorum. . . videlicet viii solidi per annum, and the tithes *of all other rents.*"

Robert St. John, brother of this William, gives "decimam omnium gabalorum de Walborton et decimam omnium gabalorum totius Villæ de Bernham."

In Spelman's Glossary, under *Traditio*, I find another gift of the same kind in these words:

"De decima denariorum et omnium reddituum suorum de Angliâ, Wills, Comes de Warrenna donavit Ecclesiam S. Pancratii (intelligo de Lewes in Sussexiâ)."

Upon this grant Dr. Tillesley remarks, "that it was not of the tithes of the demesnes;" and he adds, "that Theobald, the Archbishop, reprehends Ala, the Countess of Warren, for that she did not pay the tithes which her husband vowed."—See also *Selden's History of Tithes*, vol. iii. tom. 2, p. 1247.

These tithes appear, indeed, to have been of the nature of certain payments which may be found so far back as the time of Egbert, Archbishop of York, anno 740 or 743; in whose penitential, Mr. Soames, in his History of the Anglo-Saxon Church, observes, "It appears that the year's *tenth sceat* was paid at Easter." This he considers a personal tithe; and Wilkins renders the word "sceat", by obolus, a modern threepence. The tithes of rent, also, which I have quoted, appear

more suitable to a landlord than to a tenant,—and to be personal. But it may also be questioned whether this was an *English custom in the time of Egbert.*—See *Mr. Goode,** p. 16. I confess, therefore, that I am inclined to the opinion of Selden, that the offerings in London, as to the 52 farthings, resembled the offerings in the Greek Church called "Canonica;" and my reason for thinking so is, that we have a payment in the Anglo-Saxon Church, and said to be derived from the British Church, which resembles the tithes of London, and the Greek Canonica, which is distinct from predial tithes, *and apparently from the tithes of rent or gavel,* yet levied upon the house proportionably to its value, and paid as an *oblation.* If this can be shewn, it will, I think, render the opinion of Selden, that the tithes in London resembled the Greek Canonica, very probable.

Moreover, I do not see that the endowment of the churches in London differed so much as has been generally supposed from others in the country—in fact, originally,—but only from accidental circumstances, and the increase of houses.

I find from Dr. Tillesley, who quotes from lib. MSS., that in the time of the above-named Niger, cir. 1235,

"In the statutes between the rectors of London and the archdeacon there, amongst other offenders, '*detentores decimarum,*' the detainers of tithes in the city of London were excommunicated." And after:—

"Si contingat aliquem parochianum esse rebellem ecclesiæ suæ vel capellano suo non solvendo iis parochiis oblationes debitas et consuetas secundum facultates suas, nec alia ad eum pertinent solvere," &c. And after:—

"Tribus diebus dominicis post natalem Sancti Johannis Baptistæ, in omnibus ecclesiis a capellanis annuatim publice fiat inhibitio nequis PREDIORUM SIVE GARDINORUM DECIMAM FRUCTUUM, asportet vel asportari faciat, nisi primo ecclesiæ parochiali competenter inde fuerit satisfactum."

"And (in eodem MS.) in the petitions of the rectors of London (against the Franciscan and Dominican Friars, who much impaired their profit) to the Archbishop of Canterbury, —[Dr. Tillesley thinks Robert Winchilsea,]—and the rest of the bishops, in a synod, amongst many other complaints, this is one:—

* Reply to Sir John Campbell; and see Wilkins, vol. i. pp. 122, 123, 127.

"Item *fratribus* confessi qui, *de negociationibus* suis jure canonico solebant annuatim conferre *decimas;* a tempore quo confessionibus fratrum se submittunt MODO DEBITO NEC CONSUETO negociationes suas decimare non curant." And so in many other complaints remembering tithes: besides, in the next complaint before this, the rectors complain, how that their parishioners, who "diebus dominicis saltem et festivis tenentur visitare ecclesias parochiales, et in eisdem sacramenta et sacramentalia recipere, ac servitium divinum devote audire, NEC NON *oblationes debitas et consuetas* in missis solemnibus OFFERRE; ad loca fratrum predictorum se transferunt, et ecclesias parochiales suas spernunt et relinquunt desertas, et sic debita jura ecclesiæ quibus antiquitus ecclesiæ sunt dotatæ fratribus conferunt."

"Out of both which together (says Dr. Tillesley) I observe not only personal tithes to be paid, but also offerings, *for which*, and not the tithes, the 52 farthings, according to the rent it may be, were paid; whereby Lindwood's opinion is confirmed, who either thought them paid for the predial tithes of houses, or for usual oblations."

The conclusion which I shall attempt to substantiate is this, that they were *originally oblations* (resembling the Greek Canonica), and assessed according to the *rent or value* of the house: for I conceive that the *rent* was only fixed upon as a ready means of ascertaining the *value* of the house.

The custom of *oblations out of houses* appears to have been used long before the order of Niger: to use Dr. Brewster's words, "what else can be meant by those emphatic words of the constitution, 'prout longe retroactis temporibus, etc. consuetum constiterat.' Besides the City, in her public records, speaking of this constitution, acknowledges it to be a *confirmation* of an ancient custom, in a common Council held, die lunæ 5 Martii, an. 31. H. 6th, in these words:

"Cum olim piæ memoriæ Rogerus Niger quondam Episcopus London, ecclesias parochiales in obventionibus, et preventibus, ex quibus illarum rectores sive curati, qui animarum curæ inibi præfuere debite sustentari possent; deficere forsan informatus. *Antiquam consuetudinem imitando* consuetudinem illam per expressum roborare paterna provisione

satagens et intendens, statuerit et ordinaverit; quod quilibet parrochiamus Civit. London,—secundum ratam pensionis domus quam inhabitaverit qualibet die Dominica et die qualibet Apostolorum Fest. quorum Vigiliæ jejunantur. Quadrantem in ecclesia sua parochiali offerre tenentur, ipsaq. constitutio ex post per rectores et curatos prædict. quam etiam per cives modernos et eos qui in civitate memorata cives præcesserint acceptata admissa et continue observata fuerit et hactenus ex parte nunc civium inviolabiliter observatur." (pp. 6, 7.)

And in p. 86, an. 17. H. 8th. "That the parson doth not only mention the rent reserved upon the tenement, but insists in the libel also upon the *true value of the house* as it might be let, (prout locari poterit,—see the Bull of Nicholas V. an. 1453, by which the oblations were regulated) and as it was valued by common estimation, (prout communi nominum estimatione notorie se extendit,—see the aforesaid Bull) as appears in the 2nd, 7th, and 11th Articles of the Libel."

It appears then that the oblation was to be levied upon the true value of the house.

I shall now attempt to shew that we have an ancient ecclesiastical due which may be traced in the Anglo-Saxon Church, and said to be derived from the British Church, resembling the Greek Canonica, with which Mr. Selden compares the tithes or offerings in London, and levied apparently according to the rate or value of the house.

That to which I allude is the most ancient of our ecclesiastical endowments, *the Church-sceat of Ina,* or as it is often called, "*the primitiæ seminum.*"

I do not here wish to allude to all the various interpretations put upon this due: but I beg to give the words of Dr. Lingard, as quoted by Mr. Hale in his pamphlet upon Church-rates. In describing it, he says, "that it was a certain measure of wheat, or other grain, *assessed according to a rate of the house inhabited* by each individual at Christmas, and payable the following Martinmas." To which I may add, from Tyrwhitt's edition of Burns' Ecclesiastical Law, what Dr. Lingard further says of this church-shot, which he terms a house-tax, light-shot, and plough-alms, namely, "They formed a fund in each parish devoted to nearly the same purposes as the

revenues of the Cathedral churches."—3rd edition, under *Offerings.*

I proceed next to the investigation of the church-sceat, from Mr. Somner's Dictionary.

Cyric-sceat

"Ecclesiæ census, vectigal ecclesiasticum, church-scot: a certain tribute or payment made to the Church.

"Idem, fortasse, vel simile, de quo in S. Bonifacii Epistolis." pp. 113, 215.

Boniface was an Englishman, Archbishop of Mentz, and contemporary with Cuthbert, Archbishop of Canterbury. The passages here referred to are the following, the first of which Dr. Tillesley assigns to the time of Carloman, who, he says, "restoring some church-revenues *wholly*, for the maintenance of his wars, still retained some upon these better conditions."

The Council under Carloman is Capitul. lib. v. c. 3; and the words are, "Statuimus quoque consilio servorum Dei et populi Christiani, propter imminentia bella et persecutiones cæterarum [Dr. Tillesley, multarum] gentium, quæ in circuitu nostro sunt; ut sub precario et censu *aliquam partem ecclesialis pecuniæ* in adjutorium exercitus nostri cum indulgentiâ Dei aliquanto tempore retineamus. *Ea conditione* ut annis singulis de *unaquaque casata* solidus, id est, duodecim denarii ad ecclesiam vel monasterium reddantur, *eo modo*, ut si moriatur ille, cui pecunia commodata fuit, ecclesia cum propria [pecunia revestita sit,—Dr. Tillesley] revertitasset."

"Et iterum, si necessitas cogat, ut (aut,—Dr. T.) princeps jubeat, precarium renovetur, et rescribatur novum, et omnino observaretur, ut ecclesiæ vel monasteria penuriam et paupertatem non patiantur, quorum pecunia in precario præstita sit; sed sip aupertas cogat, ecclesiæ et domui Dei reddatur *integra* possessio."—S. Bonifacii Epist. 78, p. 113; ed. 1605.

The second passage is, "De *censu* autem *ecclesiarum, id est, solidum de casata* suscipe, et nullum habeas hæsitationem dum ex eo poteris eleemosynam tribuere et opus perficere ecclesiarum, juxta canonum instituta."—ibid. p. 215.

This census was levied upon each *casata* or house, for the word, Spelman says, answered to the Saxon *hide*, and is, Dr.

Tillesley says, " by Pope Zacharie (upon Boniface's relation of the Canons of this Council to him) interpreted 'conjugium servorum' in the place above quoted, and that in the Council of Agatha (Agde, in Languedoc) there are these words, 'Casellas vel Mancipiola.'"

The words of Zachary to Boniface are, " De censu vero expetendo, eo quod impetrare a Francis ad reddendum ecclesiis vel monasteriis non potuisti aliud, quam ut vertente anno, ab unoquoque conjugio servorum 12 denarii reddantur, et hoc gratias Deo, quod impetrare potuisti."

This census appears then, from the above quotation, to have been a part of the church-money restored to the church, a house-tax for the support of the clergy; and it was quite distinct from the decimæ and nonæ, with the latter of which Mr. Selden confounds it; since we find it paid, besides them, in a capitulary quoted by Spelman, " Apud Benedictum Levitam capitular. lib. 5, can. 127, cui sic titulus: 'De nonis et decimis vel censu ecclesiarum et in textu.'"

" De rebus vero ecclesiarum unde nunc *census* exeant, decima et nona *cum ipso censu* solvantur, et unde antea non exierint similiter et nonæ et decimæ dentur. De casatis vero 50, solidus 1; de 30, dimidius solidus; de 20, tremissus unus.

" Et ut precariæ modo renoventur et ubi non sunt scriptæ, fiat descriptio inter conventores de verbo nostro."

The census *de casata* was therefore quite distinct from the nonæ: and regarding this latter, I add from Du Cange, Gloss. (2) " Pars fructuum nona. *Nonam* ex agrorum cultu persolutam docemur ex. cap. Carl. M. lib. v. c. 147, ubi nonæ, est nona, ut loquimur Gerba, quæ præstatur ab eo, qui agrum dominicatum et in beneficium datum *colit;* unde fluxit apud nos ejus modi gerbarum præstatio. . . . .

" Ex quibus intelligendus Harigerus in Vita S. Laudolini, n. 13. " Delegavit ad ipsam quietis eorum basilicam. . . . Nonam fructuum suorum portionem, quia decimam alterius constaret esse ecclesiæ." . . . .

" Decima nempe fructus agri est ecclesiæ cujus est districtus. Nona vero ecclesiæ alteri delegatur, intentu pietatis *ac si* jure precario *ejus* olim fuisset." . . . .

"Fragmenta Capitular., edita ex MS. a Baluzio, p. 362. Nonæ vero et decimæ tantum de annona, et nutrimine, vino, fæno, et omnis generis animalium dandæ sunt.

"Nonæ et decimæ *una* simul ex prediis interdum persolvebantur, ecclesiis scilicet quarum ea fuerant, ac nonæ quidem jure Colonario, decimæ vero jure ecclesiastico, nam cum earum essent prædia nulli decimæ alteri ecclesiæ obnoxia erant. Si vero alienarentur, decimæ iis reservabantur una cum nonis."

I shall next quote Bishop Kennet's opinion from the Parochial Antiquities, Gloss: "Church-shot. Cyric-sceat. i. e. church payment or contribution. The Latin writers have commonly called it 'primitiæ seminum,' because it was at first a quantity of corn paid to the priest on St. Martin's day, as the first-fruits of the harvest, enjoined by the laws of King Ina, cap. 4; and of King Canute, cap. 10."

But it was afterwards taken for a reserve of corn-rent, paid to the secular priests, or to the religious. "So in the reign of Henry III., Robert de Hay, rector of Souldern (Oxon) claimed from the Abbot and Convent of Oseney, a certain measure of corn, under the title of church-shot, for their demesne lands in Mixbury."—p. 187.

By referring to this page of the Parochial Antiquities, I find "that the said rector, claiming a certain measure of corn from the Abbot and Convent of Oseney, for their demesne of Mixbury, and fourpence yearly for their demesne of Fulwell, by virtue of the old custom called Church-scite, did, by consent of the Abbot and Convent of Egnesham, who were patrons of the said church of Souldern, agree to receive an annual pension of five shillings, in full satisfaction for the said corn and money. And further, (p. 604,) that the quantity of corn for Mixbury was one acre of bread-corn, till Robert de Hay agreed to receive one hundred shillings from the said abbey, and the annual rent of five shillings, in full compensation for the said acre of corn and money." I do not, however, think that this instance at all bears out the Bishop's supposition of its being a *corn-rent*, in any sense of its having undergone a change in its nature from the original church-shot or primitiæ of the laws of Ina and Canute. It seems to have been paid in full accordance with them.

And Robert de Hay, as rector of Souldern, appears to have claimed *church-shot* from the Abbey of Oseney; *for* their *demesnes* in *his* parish, according to the Letter of Canute: 'Et primitiæ seminum ad ecclesiam sub cujus paroehia quisque deget quæ Anglice *curcset* nominatur."

But I am anticipating, and must refer to this again.

I add, also, the following instances from the author of Historical Remarks upon the supposed Antiquity of Church-rates, pp. 16, 17.

"Bishop Oswald, of Worcester, making a grant of lands, freed them from every charge except the church-shot, viz., two bushels of clean grain. Anno 962. 'Sit autem terra ista libera omni regali nisi *ecclesiastici censi*, id est, duos modios de mundo grano.' "—*Heming's Chartulary*, i. 145.

"In 963 the same Bishop granted lands (the author continues), and reserved upon them church-shot *twice* in the year, once at mowing and once at reaping time, so that he took church-shot in grass as well as corn.—*Heming's Chart.* i. 189.

"And in 987, the same Bishop, making a grant of lands, stipulated that the holder should pay every year for church-shot, as much seed as would sow an acre of land," [but quere, the produce of it when sown?] "Et semper possessor terræ illius reddat *tributum Ecclesiasticum* quod *circsceat* dicitur, to piringtune, (Pyrton in Worcestershire, a case in point to Souldern,) et omni anno unus ager inde *aretur* to piringtun et inde *metatur*."—*Heming*, i. 208.

"Again, Bishop Werfrith, who lived in, and a little before, the time of King Alfred, gave certain lands to his kinswoman Cyneswith, for the life of herself and two others, [this is a very early instance of a lease for lives,] with reversion to the Chapter of Worcester, and he granted them free from every sort of charge or service except one, '*except* that every year there shall be given three measures of wheat TO CLIVE, as church-sceat.' " As this land belonged to Worcester, the church-shot was not the rent of the land.

But to proceed with the investigation of the church-shot. The laws of Ina enjoin that church-sceats shall be paid at Martinmas, under the penalty of paying a fine, and the church-shot *twelvefold.*

And that each man shall give church-shot for the roof and for the hearth where he *resides* at mid-winter, *i. e.* Christmas, or the beginning of the year.

I have used Sir H. Spelman's translation of the Saxon word "healme," viz. "culmen," or roof, from the Latin version of these laws, which he thus quotes: "De cyric-sceattis (sive censu ecclesiæ) ubi danda. Sax. can. 62. Jorn. 66., and the law itself. Cyric-sceattum debet homo reddere à culmine et mansione ubi residens erit in natali."

The same sense is given to the word "healme" in Wachteri Gloss. Germanicum, "tectum, sensus extinctus, *sed* verus et PRISCUS." Somner also renders it, "tectum, culmen—a roof, the top or highest part of any thing. *Item*, culmus, calamus, haulme, stubble, or straw to thatch withall." Probably therefore the name haulme has been applied to straw from its being used for *thatching* or *roofing;* and thus in composition we meet with "healme streap," which Somner renders, "straw or haulme to thatch with."

It seems then that the word healm cannot be understood of the land.

The word itself is thus derived in Wachteri Gloss: from Gloss: Buxt: "helme" culmen, hialm, oritur non ab "helan" celare, sed ab "huillan" tegere, operire." See also Du Cange, Gloss: hialm et helmus.

The next clause,—the hearth, Somner says, signifies "the hearth or chimney wherein fire is made, as well as a private house or family, i. e. *mansio*, as in the old Latin version above. I am inclined, therefore, to understand the terms, *healm* and *hearth*, of the house itself. And this interpretation is, I think, confirmed, and in some degree explained, in the following extract from Bishop Kennet's Parochial Antiquities; in the Gloss., under *Helowe—wall*, which he says is "the hell-wall or end-wall that covers and defends the rest of the building. From Saxon "helan," to cover; hence helmet, a covering for the head. A *helm* in the north, i. e. a hovel, or any covered place: possibly, the healm or hawm with which they thatch or cover houses. Hollen, in the north, is a wall set before dwelling-houses, to secure the family from the

blasts of wind rushing in when the *heck*, or door, is open; to which wall, on that side next the *hearth*, is annexed a sconce or screen of wood or stone. 'In solutis eidem Dominæ pro quodam 'helowe-wall' unius domus apud Curtlington annuatim ii. den. p. 573."

The explanation of this "helowe—wall," serves to shew the connection between the helm and hearth in the laws of Ina, whichever interpretation we take, and to confirm their application to a dwelling-house.

We find, however, the synonymous use of the words *hearth* and *earth* in the laws of Edgar and Canute.

From the 2nd law of the former: "If a Thane hath on his bocland, a church with a cemetery, let him give to his church one-third of his own tithes; but if he has a church without a cemetery, let him give his priest what he will out of the nine parts; and let every church-shot go to the ancient minster from all the free land."—"Earth." This is repeated by Canute, but who instead of 'earth' uses the word 'hearth,' as *Ina* does.

That it had reference to a house, or if to land in respect of a house, will, I think, appear by the subsequent extracts from the Domesday Record:

"De ciric-sceatto de Perscora [Pershore, Worcestershire—the early history of this abbey is obscure] dicit vicecomitatus quod illa Ecclesia de Persora debet habere ipsum ciric-sceattum de omnibus trecentis *hidis*, scilicet, *de unaquaque hida ubi francus homo manet*, unam summam annonæ [a seam or horse-load of corn—eight bushels], *et si plures habet hidas sint liberæ*."

Again: "De ciric-sceatto quod Episcopus (de Wircestre) de omni terra quæ ad Ecclesiam pertinet [Worcester was an ancient minster], debet habere in die festivitatis S. Martini unam summam annonæ qualis melior crescit in ipsa terra de *unaquaque hida libera et villana*."

The first of these extracts expressly confines the church-shot to the *hide where the freeman dwelt:* and the hide itself, which alone occurs in the second, may be thus derived from a Saxon word "hyd," which signifies a house, still retained in our word *hut*, and the use of the word *hide* corresponds with this

derivation; for the hide or carucate of land is mentioned as the measure and principle of distribution to families as early as the laws of *Ina* (*Leges Inæ*, 32, &c.).—See *Dr. Whitaker's History of Whalley*, who adds, "Hence it is, that, by conversion, the word *familiæ* is rendered by the royal interpreter of Bede "hyde-landes."—n. p. 166. Spelman also says the words *hide* and *family*, as also *mansio* and *tectum*, were convertible. He also names the *church-shot, as one* amongst other charges upon every considerable estate. And I shall add some instances from *Sir H. Ellis's Introduction to Domesday*, vol. ii. note, p. 174. "Quatuor liberi homines tenebant de Episcopo [de Wircester] T. R. E. reddentes omnem sacam et socam et *circset*, et sepultùram, &c. . . ad predictum hundredum [quod vocatur Oswaldslaw]." This hundred belonged to the church of Worcester, which was also, as I have said, an ancient minster; in which hundred, Sir H. Ellis (vol. i. p. 190) states, "jacent *c. c. c. hidæ* de quib. episc. ipsi' æccliē à consuetudine antiquorum temporum h't om̄es redditiones socharum, &c. . . Hoc testatur totus commitatus." Again, we find in a note, vol. ii. p. 425, from a MS. Gloss., "the early period of which," Sir H. Ellis observes, "may be inferred from the existence of a Saxon version of it in the library of C. C. C. Cambridge. . . Under *Buri*, in Bucks: 'De *Geburi* consuetudine,' amongst other customs, "dare debet in festo S. Michaelis x^{a} de gablo, et S. Martini die xxiii., et sextarium ordei et duas gallinas." Query, was not this latter for church-shot?

But further, p. 427: "In the Glossary just quoted in illustration of the *Buri*, the following comment occurs upon the service of the *Villanus:* "Cyric-sceattum dare et elmesfeoh. i. pecuniam eleemosynæ," &c. And again, vol. ii. p. 435, from the same Gloss., upon the duties required of the *Cotscet:* "Et unusquisque det suum cyric-sceattum in festo S. Martini." To which I may add a passage from *Domesday*, Bucks., from Mr. Bawdwen's translation: "In eight hundreds which lie within the district [in circuitu] of Aylesbury, every sokeman who has *an hide,* or more, pays to this church one seam of corn. [Query, as church-shot?] "Moreover, one acre of corn [ac' annonæ], or four-pence [denarii], was paid to this

church, in King Edward's time, from each sokeman; but after the coming of King William it was not paid."

From the foregoing extracts, therefore, it appears that the church-shot was a personal charge, levied upon each man, as a rent-charge *for the house* in which he dwelt. "The payments for it of course varied: At Epinges [Iping], in Sussex," we find, "de cirset XL denār," from *Domesday*, tom. i. f. 29, b. "At Esseborne, in Hampshire, circesset q^{d} app$^{\bar{}}$ciat. xiiii. sol. bid. f. 39. "At Wadone [Waddon], in Dorsetshire, *De ea* habet æcclia Abodesbēr [Abbotsbury] T. R. E. vi. acras messis, 7 iii *circset* de c$^{\bar{}}$suetud."—Ibid. tom. i. fol. 79. "At Besingtone [Bensington, or Benson], in Oxfordshire, de *circet* xi. sol."—Ibid. f. 154-6. "At Hedingtone, in the same county, x. sol. 7 vi. dēn." "And in the account of Lappewrte [Lapworth], in the county of Worcester, 'De hac terra p' singulos annos reddunt: viii dēn ad æcclām de Wircestre p' circette 7 recognitione terræ.' "—Ibid. f. 174. And perhaps another instance may be found under Glostershire. In Wales, soon after the entry relating to the city of Gloster, and the mention of some villages which paid nothing, but which Earl William (of Hereford) added [*misit*] to the customary payment of King Griffin, with the leave of King William,—we read: "In eleemosyna regis ē una villa quæ p' anima ej^{d} redd. æcclæ *ad fest. S. Martini*, ii. porc. 7 c. panes. cū cervisia."

Bishop Kennet observes that church-shot was sometimes a general word [*Gloss. Par. Antiq.*], and included not only corn, but poultry, or any other provision that was paid in kind to the Religious. "So," he adds, "in the inquisition of the rents of the Abbey of Glastonbury, anno 1201, 'Manerium Glastōn: reddit per annum in Gabalo vii lib. v. sol. ii. den. In *church-set* lx gallinæ et semen frumenti ad tres acras.' "

Mr. Selden also says that the escheator, who, in the reign of Henry III., was to enquire of the profits, &c. of the king's tenants; among other items, this was one, of church-shot "tam in blado, quam in gallinis, et in aliis exitibus." And the Abbey of Glastonbury would be possessed of it, since it was an ancient minster (to which church-shot was due) as well as a *cœnobium*.—See *Dugdale*.

The truth I conceive to be this: that the payment for the church-shot varied according to circumstances, and that it was not confined to corn, but answered to the *Mosaic first-fruits.*

Du Cange says church-shot was a certain rent of threshed corn, which each man brought *to the Church* on the feast of St. Martin, in the time of the *Britons*, as well as of the Saxons. Fleta says nearly the same; but he only calls it a certain *measure* of threshed corn. BOTH *agree*, however, in tracing it to the *British* Church; and this is very important. The whole passage is so singular that I shall transcribe it from Mr. Selden, who quotes it as an old testimony for the antiquity and continuance of this payment *here:* "Chirch-esset, certam mensuram bladi tritici significat quam quilibet olim sanctæ ecclesiæ die S. Martini tempore Britonum, quam Anglorum [supple] solvebant. Plures tamen magnates post Normanorum adventum in Angliam, illam contributionem secundum veterem legem Moysi, nomine *primitiarum* dabunt, pro ut in brevi regis Cnuti, ad summum pontificem transmisso, continetur: in quibus [lege] quo illam contributionem appellat church-sed, quia *semen* ecclesiæ." Upon which Mr. Selden remarks, "But what the author means by that letter or brief of King Canute sent to the Pope, I as little know as why he cites that for an authority to prove what the Baronage did *after* the Conquest. Indeed, an epistle is extant in William of Malmsb. (lib. ii. c. 11.) which Canute sent into *England* by Living, Abbot of Tavistock, as he was taking his journey homewards *from the Pope*, and therein mention is made of this 'curc-set': of any other I am yet ignorant. This epistle was sent into England in 1031, by Living, to Æthelnoth and Ælfric, the two Archbishops, by name," [the latter of whom was Archbishop of York and Bishop of Worcester, *then* in the Province of York, and principal Minister of Ethelred and Canute; and the author of the *Saxon Homilies*, one of which is so strong against *Transubstantiation*,—see the Author of Ancient History, English and French, exemplified, and Mr. Soames' Bampton Lectures], "and the rest of the Bishops and Baronage of England. He therein straitly charges them all, that according to the ancient law they should

take care that tithes were duly paid, amongst other church-revenues." The words were, "Nunc igitur obtestor omnes episcopos meos, et regni mei præpositos per fidem quam mihi debetis et Deo, quatenus faciatis ut antequam in Angliam veniam, omnium debita quæ secundum legem antiquam debetis, sunt persoluta: scilicet eleemosyna pro aratris, et decima animalium ipso anno procreatorum et denarii quos Romam ad S. Petrum debetis sive ex urbibus sive ex villis, et mediante Augusto decima frugum et in *festivitate S. Martini, primitiæ seminum* ad ecclesiam sub cujus parochia quisque deget, quæ Anglicè 'CURCSET' nominatur." This '*curcset*,' therefore, which Fleta says was paid after the Norman income, according to the law of Moses, is here referred to the *law of the land*, which is clearly intended by the "*old law*," from the context. And it is also termed "*primitiæ seminum:*" not, however, I believe, as Fleta derives the same, "quia semen ecclesiæ," from its *mode* of payment, and as if the Saxon had been "Chirch-*sed*," or "*seed*," instead of "curc-*set*;" but, as I trust to shew, from its true origin, and because it did resemble the *Mosaic primitiæ*, though paid according to the ancient law of the land, and answered to the *primitiæ* or *canonica* of the Greek Church. But there is another particular in this letter which claims attention here, namely, that this church-shot was due *parochially*, and therefore that no distinction can be drawn between the ancient minster, to which it was to be paid according to the law of Edgar, and a *Parish* church; for the letter of Canute declares "that church-shot," or "*primitiæ seminum*," shall be paid to that church, "sub cujus *parochia* quisque deget." And that the ancient minsters were parochial, appears also from the laws of Edgar, since tithes were reserved to them in general, as well as church-shot. The words of which law Sir H. Spelman renders, "decimas quisque (dato) primariæ (cui is fuerit subjectus) ecclesiæ," "ðe seo hypnesse to hypþ," which in the old version is rendered, "ad matrem ecclesiam cui parochia adjacet."

This may be further illustrated from the laws of Ethelred and Canute, respecting the payment of soul-shot and were-geld: for the former of which it is enjoined, "And if a corpse be laid elsewhere out of its right shrift-shire, let soul-shot be

paid nevertheless into the minster which had the pastorship of it." "þe hit to hypde"—"cui corpus famulabitur vivens." "This ancient enactment," Mr. Soames observes, "is an obvious authority for burial fees, often claimed within their own parishes from the relations of parties interred without them." From all which it appears that the ancient minsters were parochial in the present sense of the word.

The word *minster* is the vernacular form of monastery; and Mr. Selden, speaking of the "ealdan mynstre" in the laws of Edgar, says, "It is plain that although 'mynstre' especially denote a monastery, yet all *parish mother-churches* are understood by it, and indeed 'cyric' and 'mynstre' are frequent as synonimies in the Saxon monuments."

Spelman says also, that "monastery is used for a church,—so also minster and munster;" and this may perhaps explain the mention of two monasteries in Cambridgeshire, which Sir H. Ellis says occur *only* in Domesday, namely, at Shelford and Meldreth.

The fourfold distinction of churches in the 3rd law of Canute, where the respective compensation for the violation of the peace of these edifices is specified, places the synonymous use of cyric and minster beyond a doubt. The first class of these is described as "heafod cyricum," which Somner renders "Ecclesia primaria vel summa—the chief, mother, or head-church." The second rank, as "medampan mynstres," which Spelman translates, "in secundaria autem et mediocri." The third, as the yet lesser, where divine service is less frequently performed, and a *cemetery* there be. The fourth, the "feld-cyrice," where no cemetery is.

And in the reign of William II. there was an enquiry whether the cathedral of Worcester, or St. Helen's in that city, was the *principal* church; which was *decided* in favour of the former. (See *Heming's Chart.*, quoted by the Author *of Historical Remarks, &c.*) But from which it plainly appears that a CATHEDRAL AS SUCH was not an *ancient minster:* and this may be the reason, perhaps, why York and Lichfield retain the name of *minsters,* as well as Ripon and Beverley. But in confirmation of the above explanation, I shall quote a passage from *Dr. Whitaker's History of the Parish of Whalley,*

in *Lancashire*, which was equal in extent to nearly a *ninth* part of that county, and the origin of which is traced almost to the first preaching of Christianity in the north of England: "Though a mere village, the parish which it denominates, contains within its limits four market towns, of which one is a borough; and the church has under it sixteen existing chapels, besides several which are dilapidated. It is also the mother of seven parish churches, with their several dependent chapels."—*History of Whalley*, p. 48.

And again, p. 59: "The word 'ealdan mynstre' appears sometimes to mean the cathedral church; but more generally denotes those churches of ancient erection to which tithes were due of common right from the first foundation of *parishes* in the present sense of the word. Cyric and minster appear to be synonymous; for not only cathedrals, but the larger mother-churches had frequently more priests than one, living, probably, in the collegiate manner; and the Saxon monasteries themselves, before the time of Dunstan, usually consisted of secular priests, who lived together without rule and without vows."

I shall conclude this digression with one or two extracts from Selden, vol. iii. p. 1212, which will further illustrate this subject. I have already observed what he remarks upon the ancient minster of Edgar's Law, namely, that it denoted not only a monastery, but that all other parish mother-churches are understood by it; and he continues—"But as the first part of his law, that gives all tithes to the mother-church of every parish, meant in them a parochial right to incumbents; so also the second part, that permits a third portion of the founder's tithes to be settled in a church new built, whereto the *right* of *sepulture* is annexed, makes a dispensation for a parishioner that would build such a church in his *bocland*, or land possessed *optimo jure*, or as inheritance derived from a charter or enfeofment. And however that second part also of this law is iterated by King Canute, yet I doubt not but that such new erections within old parishes, bred also new divisions, which afterwards became whole parishes, and by connivance of the time, took (for so much as was in the territory of that bocland) the former parochial right that the elder and mother-church was possessed of. For, that right of sepulture, or

having a "legerstowe," was, and regularly is, a character of a parish church or *ecclesia*, as it is commonly distinguished from capella. And anciently, if a *quare impedit* had been brought for a church, whereas the defendant pretended it to be a chapel only, the issue was not so much whether it were church or chapel, as whether it had baptisterium et sepulturam, or no. . . . . For if it had the right of administration of sacraments in it, and sepulture also, then it differed not from a parish church, but might be styled 'capella parochialis,' by which name some chapels are with us known. And in the Saxon times also we find *cæmeterium capellæ*, (*Ingulph.* f. 489, b.) for the burial-place of a chapel; which must be understood of a church that had the like right as that which is mentioned in the second part of Edgar's Law. And those other churches which in his and King Knout's Laws are spoken of, that is, churches without burial-places, or field churches, are only what at this day we call chapels of ease, built and consecrated for oratories, but not diminishing anything of the mother-church's profits."

In one of the laws ascribed to Edward the Confessor, it is said, "that in many places there are three or four churches where, in former times, there was but one; and *thus* the profits of the clergy were diminished." (See *Sir H. Ellis's Introd. Domesday*). It is probable, therefore, that this arose from the process described in the last extract from Selden.

I have already noticed the twofold character of Glastonbury Abbey and Worcester Cathedral, both of which received church-shot; and I shall now give an instance of the church-shot belonging to a parish church, in which capacity *only* I consider it belonging to Glastonbury and Worcester.

In Domesday Book, under *Terra Regis* in Hampshire, we read—"Ipse Rex tenet *Wallope*, &c. . . . . ibi ecclesia, cui pertinent una hida et medietas decimæ Manerii et TOTUM CURSET, &c. . . . . Ibi est ecclesiola ad quam pertinent viii acræ de decima." (From *Sir H. Ellis's Introduction.*) This is a very important entry, since it not only assigns the church-shot to *Wallope*, but the *whole* of it;—"*totum curset*," which expression seems to imply that in some cases it was divided. As, however, it is doubtful whether this is in accordance with the law of *Edgar*

(before quoted) or not, I shall only adduce Mr. Selden's remarks *here*, who says "that '*curcset*' occurs often in the *Book of Domesday*, where it is found belonging sometimes to abbeys, sometimes to parish churches, sometimes to others." And he thus explains the word itself according to Lambard: "That cyric-sceat is a church-rent of corn, or the first-fruits of corn, yearly in those times, and regularly payable at St. Martin's-day to the church, and is sometimes written *curcset*, sometimes otherwise."

In an old MS. exposition of law terms, occurs 'cherche-sonde,' "une mesure de blè que checun homme soleit envoier a Seint Esglise, en temps de Britons." "Plainly church-corn is understood, and cyrk-sceat, *i. e.* church-*rent*, is the original whence cherche-sonde is there corrupted." And among the articles inquirable by every escheator, (from *Burton's Monast. Annal. MS.*, apud v. c. Thom. Allen, Oxoniens.) in 44th Hen. III. about the profits, estate, and tenure, and issues of the King's tenants, one is of church-shot—"tam in blado, quam in gallinis, et in aliis exitibus." And that first-fruits were enjoined at an early period in England, we find from the laws of Alfred, who exhorts—"Ðine teoþan-sceattas 7 ðine frum-ripan," (called also "frum-sceattas, Somner) gangandes 7 weaxendes agyfe ðu Gode," which Dr. Ingram renders—"Thy tithe-scots, and thy *first-fruits* or *first-lings* of every kind,—give thou to God;" which law he adds is based upon Exodus xxii. 29.

The Greek 'Canonica' also to which I have alluded, is itself called 'Primitiæ,' and Origen, A. D. 200, has a whole homily upon the payment of first-fruits (besides *tithes*) according to the law of Moses. (See Polydore Vergil de Inventoribus Rerum.) But before making the comparison between the *church-shot* and the *canonica*, I give Sir H. Spelman's remarks upon the church-shot, to sum up what has been said: "Circset, Ingulpho kirkset, alias cyricset et ciriceat, Fleta churchset, verissime curc-sceat et ciric-sceat quod Saxonicum est. Census vel tributum ecclesiæ. Cyric enim à Græc. κυριακον basilica, ecclesia; "sceat," portio, tributum, pecunia. Quidem vero *set* pro "sed" intelligunt, quod est semen, quasi ciricset esset *semen* ecclesiæ debitum. Epistola etiam Cnutonis

apud Malmsb. lib. ii. de gest. Regum, cap. ii. Primitias seminum vocat, et in Inæ et Canuti Ll. Lambardus sic passim vertit. Mar. Scot. MS. in Bibl. Bodl. p. 353. *Primitiæ seminum* ad ecclesiam sub cujus parochia quisque deget. Lindenbrogius quoque in vocab. Agrarium, sic exponit *frumenti tributum:* Sed in Domesd. galli et gallinæ, qui ad natale Domini ecclesiis conferuntur etiam cyricset nuncupati sunt. Sic in grandi custumar. Monast. de Bello [Battle Abbey, in Sussex], fol. 87, a Joh. Southam ad festum S. Martini in yeme debet 1 gallinam (de redditu) et 5 gallinas de chirset."

In Synodo Ænamensi circa A.D. 1009: *Ecclesiastica munera* interpretatur, jubeturque reddi in festivitate B. Martini, quod antiquius in Inæ Ll. c. 4. sancitum fuit. Cyricsceat (inquiunt Ll.) reddita sint ad festum S. Martini. Si quis homo non compleat, reus sit 60 [quere 40] solid. et duodecies reddat ipsum ciricseat. Et cap. 62: Reddenda docet ex eo domicilio quo quis habitat in ipso die Nativitatis Domini Nostri.—*Canuti Ll.* c. 10: "gravius animadvertit in delinquentem scil. ut detenti pretium undecies pendeat episcopo, et Regi insuper 220 sol." And he concludes by citing the passages from Fleta and the letter of Canute, which I have already given; but the letter is from *Flores Hist.*, M. Westm. And having thus summed up the description of the church-shot, I shall now attempt to shew that it answered to the primitiæ or canonica of the Greek church.

Dr. Tillesley, p. 165, speaking of the Eastern Church, observes—"The state of that church was, as far as I can collect, thus: there were *debitæ à laicis primitiæ;* first-fruits due from the laity, as Nicholaus Grammaticus witnesseth in his Synodal Sentence, [under which Dr. Tillesley asks, why not tithes comprehended?] which were styled 'canonica' by Isaacus and Alexius Comneni in their Aurea Bulla; and were 'a laicorum quolibet *exigendæ pro more facultatuum* cujusque ac reverendissimis sacerdotibus præstandæ:' to be exacted of every layman according to his ability, and to be paid to the most reverend priests; which, because the priests might appoint to be paid either in money or kind, 'cunctis in locis atque *urbibus* citra ullum impedimentum observarentur,' might easily be observed in all cities and places. All this is in

that his Synodal Sentence, who was the first that intermeddled therein. Whence it appears how wrongfully our author [Selden he means] calleth them *only offerings*, and saith, that a regular certainty was not due, when they are 'debitæ et exigendæ,'—due and to be exacted. But he followeth Balsamon, whose words are thus translated by Leunclavius, whereby will appear the *liberty* of the *priests*, to require them, if they had known them, whereas if they were freewill offerings, they *might not* have required them.

"The words, first of the question, are these: 'Quæ et qualia sunt CANONICA quæ sacerdotibus et pontificibus quotannis dantur?' What, and of what sort, are the canonica which are yearly given to the priests and bishops?' The words of Balsamon's answer: 'De quantitate autem quæ pro *canonario* danda est *a plebeis*, *Canones* quidem nihil definiunt, verum Jussio Inclyti Imperatoris *Isaaci Comneni*, *formam* quorundam designat, quæ Episcopis dantur a laicis qui *sedes* in eorum Diœcesibus stabilierunt. Quoniam rerum irregularitas et indulgentia horum OCCULTAVIT descriptionem (multissimam enim eorum partem Episcopo nemo dat) contenti sumus consuetudine et dantium liberalitate.'

"Concerning the quantity of the canonicum which is given by the people, the *canons* define nothing. But the edict of Isaacus Comnenus setteth down a *form*, what by laymen of the dioceses are given to bishops. But because the inequality of things and favour hath hidden the truth thereof (for bishops receive not a great part of them) we are contented with custom and the liberality of the givers. Because they knew not they were so contented, whereas otherwise they had a regular certainty due." Dr. Tillesley then adds—"that this canonicum was a set quantity, is even by the signification of the word *certain*, like that in Agobardus' book: 'Contra insulsam opinionem vulgi de grandine et tonitruo,' which the foolish people gave their tempestarii—those priests of the witches. 'Habent statutum quantum quod de frugibus suis donant, et appellant *hoc canonicum*.' 'They gave a certain portion of corn, which they call canonicum,' which yet *there* he opposeth to *rightful tithing*. But yet further, by the Aurea Bulla of Isaac Comnenus, the ancient portion of the

eastern church *before* is not to be considered; [he had asked whether tithes might not be comprehended under the name of *Primitiæ*]. Since, as Zonaras speaketh of him, 'progressu temporis numen etiam violare ausus; multa monasteriis consecrata truncavit. . . . Sumptibus necessariis duntaxat illis relictis, cæteris vero fisco attributis.' After, he became impious, he cut off many things consecrated to monasteries, (which there, were colleges of priests), and only leaving them even necessary expenses, he confiscated the rest."

It appears, however, to me that this canonica was quite distinct from tithes; as was the church-shot in the Anglo-Saxon church. And with regard to the payment of tithes themselves, Dr. Tillesley continues—"But how they have been claimed and paid in the *eastern* church, the Greek authors in the catalogue may declare; and how at that time at Constantinople, tithes by name were paid, read Innocent the Third, and before him Anastasius the abbot, who lived about the year 860, who in his book *Contra Judæos* saith there, that 'Laici solent dare decimas sacerdotibus',—the laymen used to pay tithes to the priests."

Du Cange thus explains the word "canonicum." Gloss. Græcum: κανων, tributum; κανονικον, fees paid to the bishop. (Mr. Chambers says for degrees, promotions, &c.) "But that paid to the *priests* by the laity, called PRIMITIÆ." "*Illud vero canonicum* pensitabitur per vicos pro modo *agrorum* seu potius secundum numerum των καπνων, seu *focorum*; δια τ̃ αναλογου ποσοτητος τ̃ εν τοις βασιλικοις τυπικοις αναταιομενων—scilicet in Novella Isaaci Comneni." Here we find *that* canonicum which was called *primitiæ*, levied according to the number of chimneys or hearths, 'per vicos,' and that it was paid by the laity to the *priests*. Dr. Tillesley and others think to the *bishops*; and perhaps it was so at first, and until churches were built in the *country*. How do these several particulars agree with the church-shot or primitiæ.

But I shall now conclude this part of my subject by shewing the currency in which this canonicum was paid, which will, I trust, shew further its *identity* with the church-shot in that particular also, and that it was a fixed levy, and answered to the primitiæ. This I have taken from Mr. Chambers' *Dictionary*,

under 'Canonicum,' where we find, "that every village containing thirty chimneys, or fires, paid for its canonicum—one piece of gold, two of silver, one sheep, six bushels of barley, six of wheat flour, six measures of wine, and thirty hens." The church-shot having been shewn to have been paid in money, grain, and poultry, according to circumstances, and answering to the primitiæ.

With regard to the payment of the primitiæ, in the proper and limited sense of the word in which I think the canonica or primitiæ of the Greek Church is to be understood, and to which I have endeavoured to trace the church-shot, which is itself also called primitiæ; I shall again quote from Dr. Tillesley, who, after stating that the word primitiæ *alone* occurs (though he considers tithes may be included in it) in the Apostolical Constitutions, canons 3 and 4, adds, "And for this particular, let the author (Selden) consider whether *this* may not seem *Apostolical*, since Irenæus saith, 'Offerre oportet Deo primitias; we must offer first-fruits to God.'" And Origen, "Decet et utile est etiam sacerdotibus evangelii offerri primitias; ita enim Dominus disposuit, ut qui evangelium annuntiant de evangelio vivant, et qui altari deserviunt de altari participent. It is right and profitable to offer first-fruits to the priests of the Gospel; for so hath the Lord ordained, that they which preach the Gospel should live of the Gospel; and that they who wait at the altar should be partakers with the altar."*

And the Council of Gangra, anno 324, "Primitias . . . quas veterum institutio ecclesiis tribuit,—first-fruits which the Institution of the Elders have given to the Church;" besides the later authority of Gregory Nazianzen, where he begins, "Quemadmodum areæ et torcularis primitias et filiorum eos qui vere filios amant, *Deo* consecrare justum ac pium est, quoniam ab ipso et nos ipsi, et nostra omnia sunt; As it is right and religious to consecrate to God the first-fruits both of the floor and of the wine-press, so of their *children*, if they truly love them, because from *Him* both we ourselves and ours are." And St. Chrysostom and St. Jerome might be added.

Besides, the practice even in the Greek Church (though after), as Theodoret doth relate of Theodosius the Monk, who,

there speaking of the labour of the old religious, saith, "Est enim absurdum ut ii quidem qui aluntur in vita seculari, se affligentes et laborantes, alant filios et uxores et propteria et tributum conferant, et ab iis exigantur vectigalia et Deo offerant *primitias* et mendicorum pro viribus, medeantur inopiæ; nos autem non quæramus ex laboribus, &c. For it is absurd that laymen should afflict themselves, and labour to keep wives and children, and besides pay tribute and answer customs, and *offer first-fruits to God*, and for their ability relieve the poor, and we monks do not labour," &c.—pp. 52-53.

Again, from the Catalogue, p. 14, Capitulare Carl. M., &c., lib. vi. cap. 29: "Decimas tuas *ac primitias non tardabis offerre Domino*, de filiis tuis primogenitis; de bobus quoque ac ovibus similiter facies." And cap. 189: "Annuntient presbyteri plebi publicè, ut *primitias* omnium frugum terræ ad benedicendum offerant, et sic postea inde manducent, et decimas ex omnibus fructibus et pecoribus terræ, annis singulis ad ecclesias reddant, et de novem partibus quæ remanserint eleemosynas facient."

The origin of the custom of blessing the fruits themselves upon the altar, here alluded to, is traced by Polydore Vergil de Inventoribus Rerum, lib. vi. cap. 14, in a passage which I have quoted below, and which may explain our Anglo-Saxon Lammas, *i. e.* "hlaf-mass," or Loaf-mas-day, when they offered loaves made of their *new* corn.—See Bishop Mant's *Prayer Book*. Polydore Vergil says of this custom, "Et quia munus primitiarum Domino offerrebatur ideo Eutychianus Pontifex voluit ut ipsis frugibus sic in altari benediceretur velut apud Hebræos, olio et thure adolebantur. Servatur hodie Eutychiani institutum nonnullis in locis. Verum adeo sanctitas sacerdotium diminuta est, et laicorum pietas refriguit, ut primitiarum nomen una cum proventu pene extinctum sit, cum hodie *loco primitiarum dominicis tantum diebus panes* aliquot sua sponte aliubi offerant, aliubi vero duos tresve dent quibus sacerdos benedicat ac eos mox frustratim divisos populo distribuat ut qui alias illis diebus Eucharistiam sumere consueverat ob ejus rei memoriam panem istum ante omnia cibaria pregustet."—See also Ezekiel, xliv. 30.

I trust it will now be unnecessary for me to say more of the

later interpretations which have been put upon the church-shot, than what follows. The most feasible of these, and one which I before acquiesced in (till I was led to investigate the subject), from the opinions of others, which certainly were entitled to great respect from me, is that of a *church-rate* for the *repair* of the church. A church-rate or due I believe it to have been. But it appears to have been paid for the support of the clergy, and not of the fabric, any more than tithes were.

In short, I believe it was an *oblation assessed* according to a rate of the house inhabited by each person at Christmas, and payable to the church at Martinmas, 11th Nov. following. That it was distinct from tithes, appears from the Anglo-Saxon laws: and yet paid for the support of the clergy, will I think (in addition to what has been already said) alone appear from the law of Ethelstan, A.D. 928, in the Latin version, (but which is wanting in the Saxon,) where, after naming tithes, we read, "Et volo, ut cyric-sceatta redduntur ad illum locum cui recte pertinent, et inde gaudeant in ipsis locis qui hæc dignius erga Deum et nos volunt deservire."—*Spelman's Conc.* v. i. p. 402. This passage certainly reminds us of the manner in which the offerings under the law of Moses were spoken of, which were brought to the temple, and justifies the name of *primitiæ*. From this, and the foregoing investigation, no valid argument can, I think, be drawn by the mere philologist, in favour of its being originally intended to build or maintain the *fabric of the church*, because in the word *church-shot*, the term *church* means the *fabric*, and not the clergy.

We find it moreover occurring in laws in which distinct and coeval regulations are made for the repair of churches, especially in those of Edmund and Canute, (and it does not appear to have been confined to *cathedral* or *conventual* churches). "Somner thus, explains the Saxon "*cyric-bote:* ecclesiæ instauratio — The repairing, amending, or new building of a church." And Spelman in his *Gloss.* has these observations upon "Bota seu Bote." "Saxonic,—emendatio, refectio, restauratio, compensatio, frequens occurrit in antiquis nostris legibus, sed plerumque in compositione, ut in CIRC-BOTE, Burg-bote,

Brug-bote, Feos-bote, i. Ecclesiæ, Burgi, Pontis, nummi restauratio [or as Somner explains this, *pecuniary* compensation]. Manbote, mæg-bote, kins-bote, frithes-bote, i. vassalli, et consanguinei (occisorum) pacisq. violatæ compensatio. Retinetur hodierno foro in vocabulis hous-bote, plough-bote, fier-bote, *lignum* significantia, quod ex indulgentia legis, conductori liceat de conducto predio succidere et asportare, in ædium, sepium, aratriq. sui reparationem, etiam ignis subministrandi gratia."

With regard to the latter of these, see Bishop Kennet, who refers to *Coke upon Littleton*, p. 41. And *Chambers' Dictionary*, which says, "In some manors the tenants have common of estovers, that is, necessary *botes*, or allowances out of the Lord's Wood; in which last sense estovers comprehend house-bote, hay- (*i. e.* hedge) bote, and plough-bote." Spelman, indeed, seems to rank cyric-bote with bridge-bote and burgh-bote, &c.

Mr. Goode, in his pamphlet upon Church-rates, takes a similar view of the cyric-bote (though he considers it doubtful whether the church-shot was not also for general church purposes); and he refers to a council held in Kent, under Wihtred, at Bapchild, anno 694 (nearly the same time at which Ina enjoined the payment of church-shot in Wessex). But it may, perhaps, be doubted whether the word there used has strictly a technical sense, as it appears to have in the law of Canute.

Dr. Ingram translates the passage, where it occurs in the *Saxon Chronicle*, thus, "that the king, &c. were collected all to consult about the ADVANTAGE of God's *churches* that are in Kent;" the original being "to Godes cyrcan bote;" and this translation seems to be confirmed by the notices of this Council in Spelman, and by Dean Comber, who applies them, as well as the church-shot of Ina, as instances of the provision made for the clergy under the Saxon kings.

But, however doubtful the precise meaning of cyrcan-bote may be in this passage, in the Council of Eanham, under Æthelred, anno 1009, we find it used technically; where it is enjoined, "that if any money arise on account of Divine satisfaction, that it is to be applied, amongst other purposes, "to cyric-

bote," to the *reparation* of churches. . . 'to bocan 7 to bellan 7 to cyric-wædan,' *i. e.* ad libros, campanas, et vestimenta ecclesiæ."—See *Spelman's Conc.*

The word cyric-bote is again used by Canute, 1032, when declaring "that to church repair all folk shall contribute of right," "to cyric-bote," *i. e.* "ad fanum reficiendum" [Lambard de priscis Anglorum Legibus].—See a note in Mr. Soames' *History of the Anglo-Saxon Church*, pp. 236-7, who further says, "Johnson has appended [sub an. 1018] the following note to his translation, 'This law, which is omitted by Sir H. Spelman, shews that the reparation of churches was devolved on the people sooner than is commonly thought.'"

The preamble states that the body of the statutes in which this occurs was enacted in a Witena-gemot, holden at Winchester, at Christmas.

It is said that Canute '*decreed with his senators' advice*,' "mid his witena geþeahte gered" (Lamb. 97). He seems to have holden a legislative council at Winchester, in 1021.

The law of Edmund, an. 943, enjoins every bishop to repair God's house at his own [*See*], and to admonish the king that all God's *churches* be well behoven, as it is very necessary for us. There is an ellipse in this law which has been filled up, according to Mr. Soames' text, by Johnson's word "*See*." The Saxon, Mr. Soames says, stands "gebete Godes hus on his agnum;" literally, "*better God's house on his own*." The last word may be plural: hence Spelman has "suis ipsius sumptibus." Perhaps the meaning may be, that the bishop should better God's house, *i. e.* the cathedral, at his own expense: and the following practice of the bishops agrees with this interpretation. Du Cange Gloss. Latinitatis renders "*Domus Dei*—Templum, Ecclesia. Optatus l. 3; quando nec sepultura in Domo Dei exhiberi concessa est . . . . οικος του Θεου, in concilio Laodiceno, cap. 6. 28, et in Conc. Gangr. cap. 5. Adde Carthaginense IV. cap. 91, 92. Forojul. c. 1. Meldense, ann. 845, c. 35."—(See also Spelman, under *Dominicum*.)

"Domus nude etiam aliquando est Ecclesia. . . . Italis Domo, ut et Germanis, Dom, ecclesia principalis appellatur"

(as the Dom-kirche of Limburg). With regard also to the expression in the latter part of the same law, namely, that "the bishop should admonish the king that all God's *churches* be well behoven," we find in the canons, under *Edgar*, 967, Spelm. vol. i. p. 471, can. 14, there is one which, after exhorting those who had riches to build churches to the honour of God, and *endow* them according to their ability, adds, "And let him repair God's church according to his ability, and the highways, and construct bridges: "Instauret etiam pro facultate sua ecclesiam Dei [Godes cyrcan,] et vias publicas; aquis inviis adjungat pontes, etiam et cœnosis locis." This passage not only explains the above law of Edmund 943, but leads to the conclusion that the cyric-bote was considered to be upon the same footing as the bridge-bote and burgh-bote.—But to return to the *church*-shot. The use of the term 'church' in this word for the *fabric*, is quite agreeable with the interpretation I have given of its being the primitiæ, and as it is explained by Fleta and Du Cange, as a quantity of corn brought to the *church* by each man on the Feast of St. Martin, in the time of the Britons as well as of the Saxons. The quantity, also often mentioned in Domesday, *summa*, or eight bushels, is explained as a horse-load of corn, or such a quantity as a horse could carry.

Moreover, we find in Selden, vol. iii. p. 1126, that the canons of some of the councils, as in that of Gangra, c. 7 and 8, (et ad ea Zonaram,) speak of "καρπυφοριαι εκκλησιαστικαι, or offerings of fruits." And again, in the same volume, p. 1315, speaking "of one of those other canons, attributed also to the Apostles as authors, and to this Clement (the First) as collector, which is translated (in *Zonara*, edito a I. Quintino, Can. 4), *aliorum* decimæ *primitiæve* fructuum omnium mittantur episcopo ac presbyteris, et non super altare." The Greek, which does not mention tithes, being—Η αλλη πασα οπωρα εις οικον αποστελλεσθω απαρχη τω επισκοπω και τοις πρεσβυτεροις, αλλα μη προς το θυσιαστηριον, that is, "let all other fruit [being first-fruits] be sent home to the bishop and to the priests, but not BROUGHT to the altar;" the meaning being, that only first-fruits of new grapes before vintage time, or of young herbs fit to be eaten, or such like, (comprehended under the words νεων

χιδρων, in the next canon before) should be *brought* to the church; and so are the expositions of Zonaras and Balsamon, two great canonists of the eastern church." The whole of the canon alluded to is thus in the Latin: "Si quis Episcopus aut Presbyter, præter Domini Constitutionem de Sacrificio, ad altare offerat alia quæpiam seu mel, seu lac, aut vini loco, potionem ullam factitiam, vel aves, vel animalia aliqua, vel legumina, non ex Constitutione, deponatur: præter *novas spicas, vel botros* suo tempore (πλην νεων χιδρων, η σταφυλης, τω καιρω τω δεοντι). Licitum autem non esto, admovere aliud quid ad altare, quam oleum in lampadem et thymiama tempore sanctæ oblationis." Zonaras observes of those fruits which might be offered upon the altar, in contradistinction to all other autumnal first-fruit (οπωρα απαρχη), which was to be sent home to the bishop or priest: "Veruntamen non ut sacrificia *isthæc* offerri, sed *tanquam primitias* tempestivorum præcociumque fructuum." *This* use of the term 'church' therefore is so far from being an objection, that it becomes a positive argument in favour of the church-shot being the primitiæ, which was an *oblation brought* to the church; and the canonica or primitiæ are also called offerings. And hence also may be drawn a reason why the *offerings* in London were *so* paid, as derived from the same original, though *perhaps* forgotten. Besides, it was from this custom of offering the primitiæ to the *Lord*, that Eutychianus, as related by Polydore Vergil, instituted the custom of blessing the *fruits* themselves upon the altar, which latter custom appears in our Anglo-Saxon Lammas, or Loaf-mas-day, when they offered loaves made of their new corn; and this was also enjoined expressly in the capitularies of Charlemagne, in connection with the payment of *first-fruits*.

The apostolical canon just quoted appears indeed to have been framed to obviate some inconveniences which might have arisen from the actual *offering* of other fruits comprehended under the name of primitiæ (απαρχη), besides the *primitiæ* strictly so called, upon the altar, since it enjoins that the latter only should be so OFFERED, but the rest sent home to the bishop and priests.

I must here notice an observation of Bishop Kennet's, respecting the church-shot: "When the Saxon language grew

obsolete, this term of "cyric-sceat" seems turned by the Normans into "aver-corn," of which the quantity was left at first undetermined; but, to avoid dispute, was afterwards reduced to a certain measure. So some of the inhabitants of Minster in the Isle of Thanet paid to the abbot and Convent of St. Augustine in Canterbury (who had the church of *Minster* appropriated to them) a yearly service called aver-corn by uncertain measure; but it was agreed, anno 1263, to fix upon the quantity of two bushels and a half. (Chron. W. Thorn, p. 1913). "But all such composition for corn was generally made for delivery on All-Saints' day."

Bishop Kennet, in his Glossary, says further of this aver-corn, that it was "a *reserved rent in corn* paid to religious houses by their tenants or farmers," which Mr. Somner deduces from the Fr. *ovre* or *œuvrage*, work, as if corn drawn to the *Lord's granary* by the working cattle of the tenants. But it seems more natural (like *averia*) from *avoir* to *have* or *receive* such a quantity of corn. I suppose it owing to the Saxon "cyric-sceat" or church-shot, a measure of corn *brought to the priest* on St. Martin's day, as an oblation for the first-fruits of the earth. Under this title the religious had a reserve of corn paid yearly, as in an inquisition of the estate of the Abbey of Glastonbury (which was an ancient minster), anno 1201, 2nd King John: "Waltone reddit in gabulo assiso iv. *lib. xvi. sol.* de church-scet ii. summæ et dimid. frumenti. Cartul. Abbot. Glaston. MS. f. 38, "which church-set by a Norman epithet might easily be called aver-corn." This meaning of aver-corn fully agrees with the description of the church-shot, as a summa or horse-load of corn brought to the church; though the time is changed from Martin-mass, the 11th November, to All-Saints' day, the 1st. There is an agreement for the parish of Pidington, mentioned by Bishop Kennet, in which a payment of this kind occurs; which agreement, the Bishop observes, is of "great consequence, not only as the fundamental charter for the parochial rights of Pidington, but *chiefly* because the dignity and liberties of a *mother*-church, and the institution and dependance of chapels and their capellanes, have been by no author within my knowledge expressly stated." But I must content myself with a few

extracts which relate to my present subject, after giving the following introductory remarks from the *Parochial Antiquities*, p. 580: " The inhabitants of Pidington within the parish of Ambrosden, thinking their hamlet too remote from the parish church, had procured a chapel to be erected within their own village, with a mansion house allotted for the capellane, to be provided and maintained by the successive vicars. But this method being found a grievance by the inhabitants, and a burden to the vicar, had occasioned some difference between them, which was now composed by the joint consent of the patron, the vicar, and the people, with confirmation of the diocesan. By virtue of this agreement, the village of Pidington was now divided from Ambrosden, and invested with distinct parochial rights; the inhabitants were entrusted with the free choice of a capellane, who at first admission was to pay due obedience to each successive vicar, for a token that the said chapel did depend upon the parish church of Ambrosden. And the vicar did release and quit claim all right and title to all tithe and other profits arising from the said village, excepting the reserve of twenty shillings in money, and one quarter of wheat, to be yearly paid and delivered by the same inhabitants." This agreement was confirmed the 15th of October, 1428.

Bishop Kennet thus speaks of the quarter of wheat: " Et unum quarterium frumenti ad festum omnium sanctorum, One quarter, or eight bushels (formerly summa, now a seam), of bread-corn, or wheat. This reserve of such a measure of corn seems derived from the old custom of paying to the parish-church a quantity of corn, as the first-fruits for the seeds of the earth, called cyric-sceat, i. e. church-shot. This payment was to be made ad *mansum* vicarii predicti. The corn (and money) are to be brought and delivered at the manse of the vicar, i. e. the *vicarage-house*. This covenant obtains, and is the present custom; but not with that free livery and exemption from all cost and trouble which the reason of the contract, and the *words* of it, do imply. For now the inhabitants of Pidington pretend to claim an entertainment from the vicar at the time of bringing in the corn, and presume to come with the number of five or six men and horses (when two would be sufficient), and expect to be received with that

plenty and freedom as must prove a great burden to the poorly-endowed vicar, and must be uneasy to any sober, serious man. It is certain there was no such condition inserted in this original agreement, and therefore can be only an abuse crept in by the confidence of some guests, and the mistaken hospitality of some cheerful vicars, who, by running themselves into such needless and unjust expense, did, in effect, purchase their own dues." This may, then, be adduced as an instance of the change in the *place* of payment of the church-shot for the *worse*.

The following extract is from the original agreement:—"Ac dicti inhabitantes et eorum successores in eadem villula de Pidington prædicto Domino Johanni vicario moderno, et suis successoribus qui pro tempore erunt, ad festa Sancti Michaelis Archangeli, et Annunciationis beatæ Mariæ Virginis, viginti solidos monetæ Angliæ per æquales portiones et *unum quarterium frumenti* ad festum omnium sanctorum animantium annis singulis ad *mansum* vicarii prædicti solvent et liberabunt seu solvi et liberari, absque dilatione ulteriori facient in perpetuum." This is all that immediately relates to the subject in hand; but I add the following:—"Et omnis et omnimoda dicti Presbyteri inventio exhibitio pensionis seu salarii solutio conductio et provisio una cum dictæ capellæ et ejus cancellæ ac mansi et loci mansionis prædictæ pro eodem presbytero antiquitus deputati reparatio, constructio, et emendatio, omni tempore futuro ad eosdem inhabitantes et inhabitaturos solum et in solidum pertineant et pertinere debeant, et nullatenus ad dictum rectorem et conventum proprietorios aut Johannem vicarium aut eorum successores in eisdem."

But there is another custom not contained in this agreement, which the Bishop thinks might arise from the payment of certain offerings to cathedrals and mother-churches. "Thus," he says, "the priests and parishioners of those churches that so depended upon the Abbey of St. Augustine, in Canterbury, came in procession to the church of that monastery in Whitsun-week, 'cum oblationibus et ceteris devotionibus secundum consuetudinem observatam in ecclesiis matricibus dicti regni.'" Perhaps the annual sum of 6*s.* 8*d.*, now constantly paid by the churchwardens of Pidington to those of Ambrosden, had hence

the first original (for they are due by custom, not being in the agreement). "*It is true*, the inhabitants of Pidington have a tradition that this money is paid by them for the repair of the bells at Ambrosden, and as a consideration for their liberty of ringing at all times. But this could never be the first design of this pension, nor was it formerly so expended; for in the old ledger, or church-book, of Ambrosden, under the year 1552, the 6th Edward VI., there is this memorandum entered: 'Received *Pedyngton*-rent by Gampson, and paid to the plumbers for the reparations of the church, and xxiii^{s}. more paid, &c.,' which is proof enough that the payment of one mark from Pidington was not appropriated to the use of the *bells*, but might be employed, at discretion, to any direct service of the church. All the ground for this tradition can be only this—that when the inhabitants of Pidington came to bring such annual offerings to the church of Ambrosden, they rang the bells as a part of that solemnity; and when, instead of making their personal oblations, they compounded for 6*s*. 8*d*., they might continue the custom of ringing when they lost that of offering, and so might imagine they paid for the use of those bells which they have now no more right to claim than the inhabitants of any other parish. Though I rather believe this settled contribution was owing to ANOTHER CAUSE, viz. this: the inhabitants of a village, wherein a new chapel was erected, were still bound to be equally assessed with all other parishioners towards the repair and support of the mother-church; and sometimes this obligation was to continue by express covenant, even after their chapel was made parochial. So, when the chapel of Borstall was dedicated, an. 1418, it was agreed, that all expenses towards the building, repairing, and finding all necessaries for the mother-church of Oakley, should be proportionably raised upon the lands and tenements of those who inhabited Borstall, as well as of those at *Oakley*. By virtue of such a practice, the inhabitants of Pidington might be *obliged* to bear an equal share with all the inhabitants of Ambrosden towards the maintenance of the mother-church, till they might at last compound for the yearly sum of 6*s*. 8*d*., to prevent the trouble of accounts."—*Par. Antiq.*, p. 598.

This, I have little doubt, was the true origin of the custom and tradition, which was due, besides the quarter of corn, at All-Saints', and the 20 shillings paid on the Feasts of St. Michael and of the Annunciation of the Virgin Mary, to the vicar of the mother-church, according to the above agreement.

But with regard to the origin of this custom first mentioned by Bishop Kennet, I must quote something further from him, as it serves to throw much light upon the reason of *such* reserves to mother-churches, not only, I conceive, in token of *dependance*, but to preserve *unity;* and that the four offering days, usual all over the kingdom, were in accordance with the solemn feasts of the Jews, who, when they were required to present themselves at the temple, the centre of unity for their nation, were not to appear empty. This will more plainly appear when it is said, that the four usual offering days were Christmas, Easter, Whitsuntide, and the feast of the dedication of the parish-church, which latter clearly coincided with the feast of the dedication of the temple at Jerusalem. These offering days were over and above those, as in London, upon Sundays, &c., and the church-shot, payable at Martin-mass. And in respect to London, we find in Brewster's Coll. Eccl., p. 35, amongst the perquisites of the London clergy, in the 25th Hen. VIII., "Men's devotions on divers days, 'at all principal feasts, as Candlemas, All-Souls, &c., Easter-day, the patrons of the church, &c.,' divers offer, some *wax*, some *money*, which comes to the parson's use."—But to return to Bishop Kennet: in p. 595 we read, "Another mark of dependance on the mother-church was this—the inhabitants of the village which was thus accommodated with a chapel, were, upon some festivals, to repair to the mother-church, as an expression of duty and obedience to it: this practice was enjoined by the 31st canon of the Council of Agatha, and recommended by a decree of Gratian, and obtained as a custom in this kingdom. Hence, in the 4th year of King Richard II., the inhabitants of the two hamlets of Deretan and Bordesley, in respect of the danger by floods, especially in winter-time, and the great distance from the mother-church of Aston, in Com. Warwic., procured licence for building a chapel in their own village, provided that the inhabitants should repair to the said mother-church of

Aston on Easter-day, Christmas-day, All-Hallows, and the day of the dedication of the said church. So the Hospital brethren at Ospringe, in Kent, had a chapel, and liberty of sepulture allowed to them, but were obliged to go to the mother-church of Feversham on the chief festivals, 'Ecclesiam memoratam de Feversham in præcipuis anni Festivitatibus frequentabunt.'

"Nay, when chapels were first allowed to our colleges in Oxford, it was generally provided that such liberty should be no prejudice to the parish-church, and that the scholars of every such house should frequent the said parochial church in the greater solemnities of the year, which custom does still prevail at Lincoln College, where the rector and fellows, on Michaelmas-day, go in their respective habits to the church of St. Michael, and on the day of All-Saints to the church of All-Hallows. Accordingly, it appears to have been the practice of the inhabitants of Pidington, even long after their separation from the parish of Ambrosden, to visit frequently this mother-church, though at ordinary times they had the offices of religion at their own chapel: and this not so much a voluntary act as a necessary duty, which they were obliged to pay in respect and obedience to their ancient mother. For this reason they seem to have had a particular part of the church allotted for their reception, which part does still bear their name, though it has now lost their company."

The length of these extracts will, I hope, be excused. There is also one more interpretation which I wish to notice of the church-shot, as I conclude, by Chambers, under the head of *Annates*. He says, Matthew Paris, in his History of England, relates, under 746, that the Archbishop of Canterbury received annates of all the benefices that became vacant in England, by virtue of a grant or concession of the Pope. Before this time, among the laws of Ina, who began his reign 712 [this is a mistake for 688, Sax. Chron.], there is an order for the payment of them. I conceive that the church-shot is *here* alluded to; for I have not been able to find the passage in Matthew Paris, but only the letter of Canute occurs in his *Flores Hist.* But it is worthy of remark, that Du Cange says, *one* signification of the Greek canonicum was, *fees* paid

to the bishops in the Greek church. I trust, however, the identity of the church-shot with the canonica or PRIMITIÆ of the Greek church will be apparent from the above remarks; and that it is highly probable that Ina is only to be considered as making a regulation for the payment of an older due; its BRITISH ORIGIN being mentioned by Fleta. Somner moreover considers it to be similar to the Census de Casata in France, or the 12 pence from each house. And St. Martin, upon whose day it was payable, was Bishop of Tours in France: he died anno 400.

Mr. Soames also relates from Giraldus Cambrensis, that (about anno 429) Germanus and Lupus, missionaries from France, taught the *Britons* to pay their tithes partly to the bishop and partly to their *baptismal* church. These French bishops, the former being Bishop of Auxerre, and the latter of Troyes, came over to England, not so much as missionaries, as to assist the native clergy in combating the Pelagian heresy.—See Mr. Soames' Introd. p. 15.

Dean Comber also, p. 166, [See Appendix to Rev. Mr. Allen's Defence of the Church,] reckons the church-shot of Ina, anno 693, amongst the earliest enactments for ecclesiastical endowment by the Saxon kings, to which he adds those of Wihtred, king of Kent, 694 and 697, the former of which "forbids laymen to possess things anciently given to God." And from Spelman's Conc. I. p. 190, adds, speaking especially of the churches of Canterbury and Rochester (some others having been enumerated before), "Ecclesia (Christ's church, Canterbury) cum omnibus agris ad eam pertinentibus, similiter Roffensis ecclesia cum suis, cæterisque prædictis omnibus ecclesiis, Dei juri subjiciantur prosalute animæ meæ, &c." And the latter "enjoining that the Church should have its revenues." But the whole of this passage is worth transcribing.

Spelman, vol. i. p. 194, thus renders the Saxon: "Libera sit ecclesia, fruaturque suis judiciis ('freols dome'), et redditibus seu pensionibus ('gafola'). Pro rege preces fiant mandatisque ejus *non* cogente necessitate, sed ex sponte obediunto."

The next regulation relates to the peace of the church,

the penalty for the violation of which was equal to that for the violation of the peace of the king: "Pacis ecclesiæ (quod Mundburgum vocant) L solidorum esto compensatio, tantundem sicuti ut regis."

These enactments distinctly state the principles of the union of the Church and State at this remote period: the first of King Wihtred's Ecclesiastical Laws declaring "that the Church shall be free and enjoy its privileges, and rents or pensions. And let them pray for the king, and render obedience to his commands, not from necessity, but of a willing mind." And Magna Charta, 1. "Anglicana Ecclesia libera sit, et habeat sua jura integra et libertates illæsas."

And in illustration of the sacred and inalienable nature of the endowments of the church, I would add that Ethelbert, king of Kent, (whilst Augustine was living,) uses these expressions when guarding against the abstraction of them: "Godes feoh 7 ciricean xii gylde;" which Spelman renders—"Quicunque *res Dei vel ecclesiæ* abstulerit duodecima componat solutione, &c.;" and he refers, p. 128, to Bede, Hist. Eccles. lib. ii. c. 5, who relates of Ethelbert—"Qui inter cætera bona, quæ genti suæ consulendo conferebat, etiam decreta illi judiciorum, juxta exempla Romanorum, cum consilio sapientium constiterit, quæ conscripta Anglorum sermone hactenus habentur, et observantur ab ea. In quibus primitus posuit, qualiter id emendare deberet, qui aliquid rerum vel ecclesiæ, vel episcopi, vel reliquorum ordinum furto auferret: volens scilicet tuitionem eis, quos et quorum doctrinam susceperat, præstare." It is observable also, that Boniface, in his Epistle to Æthelbald, king of Kent, anno 745, complaining of the sacrilege which had been committed in his time in England, thus describes the perpetrators of it—"Qui *Christi pecunias et ecclesiæ* fraudavit vel rapuit." And he dissuades the king by the following example amongst others: "Carolus quoque princeps Francorum, multorum monasteriorum eversor, et *ecclesiasticarum pecuniarum* in usus proprios commutator, longa torsione et verenda morte, consumptus est." The force of the term *church*, in the church-shot of Ina, may be hence collected.

The church-shot of Ina has been rendered a church-rent, or tribute; and in the best and highest sense of the words it

may be so considered, being an oblation yearly brought to the Church by each inhabitant of a house, and which, by subsequent general enactments, became a national tribute to, and acknowledgment of, the Lord of the whole earth; and practically taught that "the earth is the Lord's," and that it is "He that hath given it to the children of men."

The true spirit in which oblations should be made (implied in this enactment) is so truly exemplified in the following mottoes, which Burns [under *Offering*, p. 21, note] says were inscribed upon the piece of gold which King James I. used to offer at the holy altar upon the usual offering days, that I shall close this part of the subject with them:—

"Quid retribuam Domino pro omnibus quæ tribuit mihi?"
"Cor contritum et humiliatum non despiciet Deus."

"What shall I render unto the Lord for all his benefits towards me?" "A *broken and a contrite* heart, O God, Thou wilt not *despise*."

This pious tribute of prayer and praise (without which the gold and silver is a vain oblation, for of *His own* only can we *offer* unto Him,) is equally in the power of every one, even of him who hath neither, to offer at His *altar*, *whose* is the silver and the gold, and who is *King* of kings, and *Lord* of lords, the God of the rich and poor alike.

If these conclusions are admitted, it is, I think, evident that the opinion of Selden respecting the origin of the tithes in London is confirmed, since they resemble both the church-shot of Ina, (which Mr. Selden calls primitiæ, or a church-rent of corn yearly,) and the canonica or primitiæ of the Greek Church: in short, that they were (as to the 52 farthings) a *house-tax* paid by way of *oblations* on *Sundays*, in lieu of the *primitiæ*, which were paid both in the eastern and western churches, and which in the former, under the name of canonica, and in the Anglo-Saxon Church under that of church-shot, were paid, as a sort of house-tax, by way of *oblation*.

Many causes also may have operated to produce variations, both in kind and proportion (and I am not arguing for the strict identity of proportion), between the church-shot of Ina and such payments as the offerings upon Sundays in London,

and their true origin may have been forgotten. And, coming so near a tenth of the rent, they may (as Selden conjectures) have been looked upon as a tithe paid: and they clearly were so considered by Lindwood.

But another circumstance which renders the origin of the tithes in London from the primitiæ more probable, is, the statement of Polydore Vergil, that in his time "*instead* of the primitiæ, they only in some instances offered loaves upon every Sunday, and in others gave two or three only of their own accord, "which the priest might bless and distribute to the people." But the payment of Dominicals, or Lord's-day offerings for the support of the minister is still customary at Exeter; some important particulars relative to which, I have been favoured with through the kindness of Ralph Barnes, Esq., of that city, who, in reply to my enquiries, arising from the case mentioned in the British Magazine for August, 1838, under the head of 'Dominicals' writes, "that *Dominicals* are due by *custom* in Exeter, there is no doubt; they are paid, and constitute the only provisions for the ministers. Dominicals in Exeter are a payment of *one penny a week for every house, a customary offering* (standing in lieu of tithes); they are the 'Oblationes Dominicales' alluded to in the Valor. I believe similar payments exist in Norwich and Canterbury, and probably in other cities. In London the churches are fortunate enough to obtain a conversion of their payments into an *ad valorem* rate on the houses, supposed to have parliamentary authority." "In *practice* the Exeter incumbents send round a book at Easter, and each housekeeper is called on, the demand is 4*s*. 8*d*.—1*d*. a week, and 4*d*. at Easter; and the churchmen pay more *ad libitum*, the dissenters pay the exact sum."

The entry in the Valor above alluded to, for the parish of All-Hallows upon the Walls: "In oblaco'ib d'nical p. an. lxix^{s}. iiij^{d}. Et in iiij^{or} dieb oblac' p. an. xij^{s}. vi^{d}. Et in omnibus dec' et al' p. sic cont. in libr. paschal. p. ann. xxviij^{s}. x^{d}. . . . . Inde resolut' decano et capitulo ecclesiæ Cath'eis b'ti Petri Exon et suc' suis de quādm annuāl' pencōe p. annū xij^{d}. Et rem. clar. £ ciiij^{s}. viij^{d}. In. p. x^{ma} x^{s}. v^{d}. ob'. q'."

There are many similar entries for parishes in the city of Exeter. I subjoin two others which somewhat vary, and may

also serve to shew that the endowments of these livings are not very dissimilar from what I suppose those in London to have been.

"EXETER.—Rectoria S'c'i Ed'i sup' Pontem. In oblaco'ib d'nical cj^{s}. x^{d}.; et in iiij^{or} dieb' oblacoib' xviij^{s}.; et in dec' molend' xl^{s}.; et in omnibus al' dec' et p'fic *in libr. paschal.* lvij^{s}. iiij^{d}."

"Rectoria S'c'i Leonardi. In reddit assiē de la gleblond xj^{s}.; et in x^{ma} garb xx^{s}.; et in feno xviij^{s}.; et in iiij^{or} dieb' oblaco'ib xx^{d}.; et in omnibus, etc."

For the purpose of comparison with this, I shall add the extract from the Valor, relative to the rectory of All-Hallows, in Lombard Street, London. "In decimis et mansione valet (p. annū) xxi^{l}. xvj^{s}. viij^{d}.; et in iiij^{or} diebus oblacōnum cum aliis casual, xx^{s}."

Brewster gives the subjoined particulars to prove that the tithes of *houses* in London did not excuse from personal tithes. He observes, pp. 22, 23,—"We may add the practice of some citizens themselves *accordingly*, who (as appears by ancient monuments) paid personal tithes when those other tithes, or oblations out of houses, were at the highest, viz. at 3*s.* 6*d.* in the pound, according to the true value of houses; as appears by the Decimary of St. Magnus, in the said book of Common Customs, fol. 87, in the 9th of Hen. VII., anno Dom. 1494, where the privy and personal tithes, and some other casual duties, *besides* the offerings out of houses, amounted to 12*l.* 13*s.* 4*d.* The same may be collected from the extracts relative to Exeter.

Church-shot is defined in Dr. Cowell's Law Dictionary to be "*a customary oblation* to the parish priest."—[See the Appendix to the Rev. J. Venn's Speech at Hereford.] And this agrees with its derivation from the primitiæ, and mode of payment at the church at Martin-mass. There is no great difficulty in conceiving, therefore, how the oblations made at the altar upon Sundays in London might have been derived from this church-shot, or from the primitiæ itself; for the mode of payment, "in missis solemnibus," upon Sundays and festivals, was not only agreeable to the custom of the eastern and western churches, as appears by the writings of the Greek

and Latin fathers [See Brewster, p. 14], but also with that of the canonica, or primitiæ, paid as *offerings*.

Moreover, with regard to the Anglo-Saxon Church, I have before endeavoured to shew that the primitiæ, or *church-shot*, was due *parochially* from each parishioner, as appears alone from the letter of Canute (and Lindwood affirms the same of the tithes in London), also that the original endowment of the churches in London did not differ so much as is sometimes supposed from others in the country, except in consequence of the accidental circumstances of their having no glebe, and the increase of houses, and the consequently increasing importance of payments arising from them. This conclusion, it must however be confessed, inverts the process of Lindwood's argument, who states that the churches in London were not otherwise *anciently* endowed than with the tithes of the rent of houses, and which were *paid* by way of oblations upon Sundays. But my reasons are founded upon the passages given by Dr. Tillesley (chiefly), which mention not only *oblations*, but personal tithes, and the tithes of the fruits of farms or gardens, "prediorum sive gardinorum;" and in the very time of Niger himself, who made a regulation for those oblations according to an *ancient custom*.

Boniface, who was an Englishman, and Archbishop of Mentz, in his Letter to Cuthbert, Archbishop of Canterbury, anno 745, speaks of tithes and oblations as the support of the clergy at that time; and Lindwood himself affirms oblations to be due *parochially* as well as tithes. But if his opinion of the oblations in London being in lieu of the predial tithes of houses is preferred, I have now the satisfaction of adding the following opinion of Somner upon the church-shot (which I did not meet wi.h till I had written the above), by which the identity of the *tithes* in London and the church-shot of Ina may still be maintained. For he says (in his Gloss. ad Decem Scriptores), that *church-shot* was paid for the *tithes of houses*. The passage is as follows: "*Cyric-sceattum*] Sic scribendum, quod 761 ult. ciric-sceattum, aliter (ut in Ll. Hen. I., c. 11) sed perperam etiam, chiric-sceattum, nec melius hic 469, 37. *Syric-seat*. Vox est pura, puta, Sax. 'cyric-sceat.' Sc. quam Lambardus, legum Saxonicarum primus editor et inter-

pres doctiss. sæpe Latine redditj (quomodo etiam in verbor. explicatione eisdem Ll. præfixa) *primitiæ seminum*, ad *verbum* autem (inquit et rectius), VECTIGAL ECCLESIASTICARUM, *quam* quidem versionem, posteriorem sc. amplectitur doct. Whelocus (ad Ll. Sax. præfat.) *priorem*, ut inconcinnam, nec immerito, rejiciens. *Primitiæ* nempe, Sax. "frumsceata," alias "frumripa." In Gloss. sub finem Lambardi Glossar. *cyric-sceat* ECCLESIÆ CENSUS redditur; quomodo etiam vel apud Lambardum ipsum Ll. Canuti, p. 1, c. 11, et bene quidem, *cum revera census sit sive* in gallinis, *sive aliis rebus*, PRO ÆDIUM DECIMA, solvendis die S. Martini, *de quo* vide Gryphiander de Weichbildis Saxonicis, c. XXX. num. 11. Voce ducta a Sax. *cyric* ecclesia, et "sceat," posterioribus SCOT; census, Vectigal, symbola, nummus. *Male* interim "teoþan sceattas" *pecuniarum* decimas Latine fecit idem Whelocus, notis ad Bedæ Hist. Eccl. l. iv. c. 29, cum dictio simpliciter, sive generatim (quomodo Lambardo ibidem visum) *decimas* plane signet."

But, notwithstanding, I am induced by the above remarks to consider the *greater* probability to be in favour of BOTH the oblations in London, and the church-shot of Ina, being a *regulation* in lieu of the primitiæ, and levied as a house-tax, yet still paid as *an offering:* though, perhaps, *both* might subsequently be considered as a tithe or modus decimandi for houses, according to later opinions, a house being called by Lindwood "*predium urbanum*," and upon the rent or profit of which he considered a *predial tithe* to be due.

The identity, however, of the *primitiæ* with the *church-shot* of Ina does not appear to have occurred to Somner, or rather that the *latter* was a *regulation* or enactment for the payment of the *former*. And that *primitiæ seminum* was not a *mistranslation* of Lambard's, or a *translation* at all of the Saxon word *cyric-sceat*, which he renders *ecclesiæ census*, but an explanation of it, which plainly appears from the letter of Canute, which enjoins (as above) "that in the Feast of St. Martin, 'primitiæ seminum,' first-fruits or primitiæ [shall be paid] to the *church* within the parish of which each one dwells; *which* in English is called church-shot."

Somner refers to Gryphiander de Weichbildis Saxonicis

for an account of the census—" pro ædium decima;" who, cap. 30 (de decimis Saxoniæ) and Num. 11 (decima quandoque pro censu accipitur), says, " *Ita* enim *gallina* quæ pro decima ædium solvenda est die Martini, in d. art. 48. Census appellatur in d. art. 58."

Gryphiander thus speaks of the tithes of Saxony, in the beginning of this chapter: " In eodem prætenso diplomate (sc. Carl. M.) ex speciali libertate Saxones cætera immunes, decimas tamen ecclesiis pendere jubentur, utpote jure divino debitas. Atqui id quoque falsum est. Ut ut enim hic in medio relinquatur, utrum decimæ clericis jure divino (Novi scilicet Testamenti) debeantur, quod affirmat jus canonicum c. decimas 16. q. i. c. parochiis, ext. de decim. gl. in ca. clem. i. de decim. Guid. Pap. decis, 284. Negat Arnisæ, de exemt. cler. cap. 4. in princ. constat ex capitulari Carolino eas clericis quidem solvendas esse, sed ita, ut quarta tantum pars psarum sustentationi cedat. lib. 3. Ll. Langob. 3. c. vobis, 12. q. 2. Arnisæ d. c. 4. Quod in Concilio Salisburgensi à Carolo M. coacto ita statutum est. Aventin. lib. 4. annal. Centur. Magdeb. 9. c. 9." . . . . . And afterwards, in Nu. 10, " Certe in jure Saxonico, inter jura, quæ clericis debentur, decimæ non continentur, art. 2. lib. i. Landrecht. Quamvis enim art. 48. lib. ii. Landrecht de decimisagat, tamen illic non ecclesiasticæ sed seculares decimæ intelliguntur. Unde etiam indifferenter decimæ,(Nu. 11), *census* et pacta [Pacht] à colonis præstanda dicuntur, art. 58. lib. 2. *Ita* enim gallina, quæ pro decima ædium solvenda est die Martini, in d. art. 48. Census appellatur, in d. art. 58, ubi recte glossa. Nota, inquit, quod iste articulus, in parte, qua de decimis dicitur, intelligitur de iis, quæ laicis fuerunt concessæ, de hoc vide c. cum et plantare, ext, de privile, c. prohibemus, de decim. ademptæ scilicet ipsis in Concilio Laterano, anno 1179. Ante illam enim prohibitionem etiam laici decimas habebant. Hactenus gl. in d. art. 48. n. 3."

And with reference to the same subject, I shall only further quote a letter of Alcuin to Charlemagne, which Selden says was written about the year 797, to persuade him not to make the exaction of tithes from the *Huns* and *Saxons*, whom he had lately conquered, according to his general

laws, passed in 780. This letter is besides interesting, since Alcuin was an *Englishman*, and as containing a remarkable passage relative to the mode of tithing at that time in France, and probably in England also. The letter commences—"Vestra sanctissima pietas, sapienti consilio prævideat, si melius sit rudibus populis, in principio fidei, jugum imponere decimarum *ut plena fiat* per *singulas domus exactio illarum*. An Apostoli, ab ipso Deo Christo, edocti, et ad prædicandum mundum missi, exactiones decimarum exegissent vel alicui demandassent dari, considerandum est. *Scimus* quia decimatio *substantiæ nostræ* valde bona est, sed melius est illam amittere quam fidem perdere. Nos vero in fide Catholica *nati, nutriti,* et *edocti,* vix consentimus *substantiam nostram pleniter decimari*. Quanto majus tenera fides, et infantilis animus et avara mens illarum largitati non consentit?"

I shall here conclude, as my only object in these Remarks upon the Nature and Origin of the Tithes in London, has been to lead attention to the remedy proposed in the title-page, for the present inadequate endowment of many populous places, by similar payments out of houses. The *proportion* paid is not my object, because this might vary in different places, and yet be sufficient. But I trust the foregoing Remarks will not only shew the antiquity of a payment out of houses for the support of the clergy in the English church, and its recognition by the laws of the land in the church-shot of Ina; but also may tend to obviate some difficulties which have arisen in regard to the mode of levying these payments, even where local regulations exist for them.

For as it appears that the oblation or tithe was to be levied upon the true value of the house, from the Bull of Pope Nicholas V. anno 1453, (according to which the tithes in London were regulated,) and which was referred to an. 17th Hen. VIII., when the parson not only mentions the rent reserved upon the tenement, *but insists* in the *Libel* also upon the true value of the house, as it might be let [prout locari poterit], and as it was valued by common estimation [prout communi hominum estimatione notorie se extendit].

The rent or value of the house, in this sense, might be easily ascertained, and the difficulties so frequently com-

plained of be obviated, by a reference to the present mode of assessment to the poor's rate. And if this assessment was, from time to time, made the basis for the future and continual regulation of these payments, the injustice of a fixed rent charge, when all the property has been greatly increasing in value, and the spiritual wants of the people proportionally, would be completely obviated.

My object, however, is further more especially to suggest a remedy for the inadequate endowment of those populous places where no payments are made from houses, and the spiritual wants of the people are great. And with this view I have entered as fully as I could into the nature and origin of the tithes in London, in order that the justice and equity of a similar payment out of houses in other places might appear from the ancient laws of the land. The proposed regulation also in the Reformatio Legum Ecclesiasticarum under Edward VI., which I have before alluded to in the Introduction to these Remarks, will afford a precedent for my present suggestions; although those were made for the payment of *personal* tithes in other places, *according* to the custom of the City of London, in chapter 14, which is thus prefaced: "Magnam indignitatem habet à tenuibus et laboriosis agricolis decimas annuas ecclesiarum ministris suppeditari, mercatores autem opibus affluentes et viros scientiarum, et artificiorum copiis abundantes, nihil ferme ad ministrorum necessitates conferre, præsertim cum *illis* ministrorum officio non minus opus sit q' colonis. Quapropter, ut ex pari labore *par* consequatur merces, constituimus ut mercatores, pannorum confectores, et artifices reliqui cujuscunque generis, ac omnes qui scientia vel peritia qualecunque lucrum percipiunt *hoc modo* decimas persolvant: *pro domibus* nimirum atque terris quibus utuntur, ET ILLARUM RATIONE DECIMAS PRÆDIALES *non solvunt*, quolibet anno dabunt *annuæ pensionis decimam partem.*"

Then follows chapter 15, how proprietors were to pay these tithes: "Quod mercator, aut artifex, aut qualiscunq' negociator, aut scientia vel peritia se sustentans, *proprietatis jus* vel in ædibus habet in quibus inhabitat, vel in terris circumfusis, quibus ad mercaturam, artificium vel peritiam utitur, *hanc cum illis rationem* iniri volumus, ut ex una parte minister, et ex

altera parte possessor, singuli *singulos arbitros* sumant; et arbitri sumpti definiant *quanti* domus et terræ sint, et *quo pretio locari possunt, et illius pretii* decimam a possessore minister accipiet. Et inter duos arbitros si forte convenire non possit, *ordinarius* illius ecclesiæ proprius tertium assignet *virum gravem et hujusmodi controversiarum callentem* et quod illi videbitur *id* in hoc negotio teneri placet."

Some instances of the local application of the principle which I am advocating, may be found in the cases already quoted from Dr. Bryan Walton, as at Coventry, Norwich, &c. Speaking of the first of which, Dr. W. says (and which remark shews that this case did not apply to his argument before), "There was an Act of Parliament made in the beginning of Queen Mary's reign for 2*s.* in the pound in Coventry, in which Act the preamble is remarkable; for there it is said, that by oblations and free-offerings the curates of that city, before the time of Edward VI., were sufficiently provided; but upon *Reformation* devotion grew so dull, and the cures were so poor and beggarly, that none would undertake them; whereupon the citizens were forced to procure this Act to provide maintenance out of houses, that so they might be provided of some to take care of their souls."—*Brewster's Coll. Ec.* p. 35.

Respecting the case of Royston also, which I have already noticed, in addition to those given by Brewster, I am enabled to furnish some important information, through the kindness of the Rev. S. Cawtherley, the vicar. This parish was erected by Henry VIII. (after the dissolution of the priory there, the church of which had been purchased by the inhabitants), the town being formerly in five parishes, and the endowment is extant; before giving which, I shall refer to a part of the preamble of the Act of Charles II., 1660, for the maintenance of the vicar of Royston, which, after reciting that the said late church of the priory was, by an Act of 32nd Henry VIII., made the parish church, and that "no considerable provision" was "made in the said Act for the maintenance of the vicar thereof," adds, "but ever till of late years the vicar there hath been maintained out of a voluntary contribution of twelve pence in the

pound, according to the rent of the several houses in the said town;" "but of late years some persons have refused to pay or contribute any thing towards the maintenance of the said vicar, by reason whereof the said parishioners were utterly destitute of a minister to perform all ministerial offices there," and were consequently obliged to procure this Act. The endowment by Henry VIII. here referred to is as follows: "And that also the said vicar and his successors shall have and receive *all* the tithes, offerings, oblations, and obventions, and other ecclesiastical duties and rights which shall grow and be due by the customs of the realm and ecclesiastical laws of the same, to be paid, had, or made, by the inhabitants of the said town, *except* only the tithes of corn, hay, wool, lamb, and calf, which tithes of corn, hay, wool, lamb, and calf shall henceforth be paid, by authority of this Act, unto the parsons and curates of the said five churches in like manner, form, and condition as heretofore it hath been accustomed," &c. And the vicarage is valued in the King's books (there are no items) at £10, and £1 yearly tenths. The above endowment is nearly the same as the *altarage* mentioned by Spelman in his Glossary. The payments out of the houses in this town, under the Act of Charles II., were ordered to be made quarterly (by equal payments), and "at four feasts of the year, that is to say, at the Feast of St. Michael the Archangel, the Nativity of Christ, the Annunciation of the Virgin Mary, and the Nativity of St. John the Baptist," which, with one exception, are the same as the offering-days fixed by Henry VIII., A.D. 1536.—(See Wheatly.) And I, for one, do not so much undervalue the piety of individuals at the *present* day as to believe that such an appeal (if duly laid before them) as that which I have been humbly advocating (and most inadequately, I am fully sensible,) in the foregoing pages, would *not* be responded to in a similar manner, both to remedy defects in such local regulations, as at present exist, and to provide them upon an improved basis, as has been above proposed, where there is no such provision at present, though greatly needed.

This appeal might, at least, be addressed to Churchmen, and *all* impropriators, lay and clerical, who might then be

exhorted to bear their respective shares in aid of the augmentation and supply of the increased and increasing wants of *those livings* which have a *more especial* claim upon them: and thus that which has been *the reproach* of the Reformation might be removed. But above all, an acknowledgment would thus be made, that we of the present day are sensible of the great mercies vouchsafed to our land, three centuries ago, by the Author and Giver of all good, who then removed from our ancestors that most awful visitation spoken of by the prophet Amos, ch. viii. v. 11: "*Not a famine* of bread, *nor* a *thirst* for water, BUT of hearing the words of the Lord."

The adoption, also, of the plan which is here advocated would at once answer the intention of *oblations*, and guard against the irregularities of the Voluntary System, as the church-shot of Ina did. And as I have, in the Introduction to these Remarks, adverted to the legislative enactments contemplated for making provision for the clergy out of houses, I shall conclude with observing, that by a compliance with the remedy here proposed, the intentions of the compilers of our present Liturgy might be in some degree fulfilled, who, in the sentences appointed to be read at the Offertory in the Communion Service (though now, from the general neglect of this duty, omitted), as well as in the Rubrics accompanying, distinguish between "the alms for the poor and the other devotions of the people." And in the last Rubric but one, at the end of the Communion Service, "And note, that every parishioner shall communicate at the least three times in the year, of which Easter shall be one. And yearly, at Easter, every parishioner shall reckon with the parson, vicar, or curate, or his or their deputy or deputies; and pay to them or him all ecclesiastical duties accustomably due, and then and at that time to be paid."

Wheatly observes, "What are the 'ecclesiastical duties' here mentioned, is a matter of doubt. . . . but that it appears by an 'Act of Parliament, in the 2nd and 3rd of Edward VI.,' that personal tithes are to be paid yearly, at or before the Feast of Easter, and also that all lawful and customary offerings, which had not been paid at the usual offering-

days, are to be paid for at Easter next following." And he adds, in a note, "The usual offering-days at first were Christmas, Easter, Whitsuntide, and the Feast of the Dedication of the Parish Church" (evidently in correspondence with those of the Jewish Church); "but by an Act of Henry VIII., anno 1536, they were changed to Christmas, Easter, Midsummer, and Michaelmas."

And I know of no more suitable appeal which can be made by the clergy of the Reformed Church of England to the laity of that Church, under her present circumstances, than the following one of St. Paul to the Corinthians (1 Cor. ix.): "If we have sown unto you spiritual things, is it a great thing if we shall reap your carnal things?" "Do ye not know, that they which minister about holy things, live of the things of the temple, and they which wait at the altar are *partakers* with the altar?" "*Even so hath the Lord ordained that they which preach the gospel, should live of the gospel.*" And I shall only add the observation of St. Jerome on the 3rd of Malachi, who says, "Quod de decimis primitiisque diximus, quæ olim dabantur a populo sacerdotibus et levitis, in Ecclesiæ quoque populis intelligite, *quibus præceptum est*, non solum *decimas et primitias dare*, sed et vendere omnia quæ habent et dare pauperibus, et sequi Dominum Salvatorem; *Quod* si facere nolumus, saltem *Judæorum* imitemur *exordia*, ut pauperibus partem demus ex toto, et sacerdotibus et levitis, honorem debitum deferamus Unde dicit Apostolus; honora viduas, et presbyterum duplici honore honorandum. Quod qui non fecerit, Deum fraudare et Dominum supplantare convincitur, et maledicitur ei in penuria rerum, qui parcè severit, parcè et metat, et qui in benedictione seminat, in benedictionibus fructus colligat abundanter."

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APPENDIX.

I have already observed (p. 30.) with reference to the later interpretations which have been put upon the church-shot, that from the preceding remarks no valid argument can, I think, be drawn by the *philologist* in favour of its being a payment towards the support and repair of the fabric of the church, who asserts that in the word *church-shot*, the term *church* means the fabric, and not the *clergy*,—for this it may do consistently with my own interpretation; and to which I would add, *nor* for general church-purposes; but that the *church-bote* appears to have the fairest claim to this interpretation. I wish, however, here to consider more particularly the argument adduced by Mr. Soames, in favour of the church-shot being the *legal* origin of *church-rates*, founded upon the allegation of its being a commutation, or legislative provision "for the sacramental elements, and like demands of our holy profession, anciently provided for by oblations upon the altar." I conceive it to have been, as I have attempted to shew, a legislative provision, by a regular assessment upon houses, for that primitiæ, which was an oblation for the priests, distinct from tithes.

The apostolical canons not merely distinguish between the *first-ripe* fruits, or primitiæ, which might be offered in their season, at the altar, and the other *autumnal* first-fruits, which were to be sent home to the bishop or priest, and not brought to the altar (and to which latter I have endeavoured to trace the church-shot), but also distinguish them from tithes, in another canon ascribed to St. Matthew. See Selden, vol. 3. tom. ii.

p. 1313. *ετι εγω προστασσω πασων απαρχην προσκομιζεσθαι τω επισκοπω και τοις πρεσβυτεροις και τοις διακονοις εις διατροφην αυτων*, &c. *πασαν δε δεκατην προσφερεσθαι εις διατροφην των λοιπων κλερικων και των παρθενων και των εν πενια εξεταζομενων*,—that is, "I further ordain, that all first-fruits be brought to the bishop, and to the priests, and to the deacons, for their maintenance; and that all tithes be offered for the maintenance of the rest of the clergy, and of virgins, and of widows, and of poor people."

And with regard to the sense in which Irenæus and Origen use the word *first-fruits*, in the passages I have quoted from them in p. 28, I shall adduce the following extracts; and first from Irenæus. Dr. Tillesley (p. 3.) observes, "Irenæus, 'qui proximus fuit temporibus apostolorum;' as S. Basil. de S. St^o., cap. 25. He (lib. iv. cap. 20.) saith, 'Sacerdotes sunt omnes Domini apostoli, qui neque agros, neque domos hæreditant hic, sed semper altari et Deo serviunt. De quibus et Moses, Non erit sacerdotibus Levitis in tota tribu Levi pars, neque substantia cum Israel, *fructificationes Domini* substantia eorum, manducabunt eas. Propter hoc et Paulus: Non inquiro, inquit, datum, sed inquiro fructum. (Phil. iv. 17.) Discipulis, inquit Dominus, Leviticam substantiam habentibus,' etc. The apostles are the priests that serve at the altar;—that must eat the Lord's part;—that must have the substance of the Levites,—not of gift, but right. Of them spake Moses. . . . . In the same book, cap. 27, 'Et propter hoc Dominus, pro eo quod est, Non mœchaberis, non concupiscere præcepit: et pro eo quod est, non occides, neque irasci quidem: et pro eo quod est *decimare*, omnia quæ sunt pauperibus dividere: hæc omnia non dissolventis legem erant, sed extendentis et dilatantis in nobis.' And cap. 31, 'Quæ autem naturalia, et liberalia, et communia omnium, auxit et dilatavit.' Therefore *decimare*, according to Irenæus, is plainly natural. And cap. 34 of the same book, 'Offerre igitur oportet Deo primitias ejus creaturæ; sicut et Moses ait, Non apparebis vacuus in conspectu Domini Dei tui, ut in quibus gratus exstitit homo, in his gratus ei deputatus, eum qui est ab eo percipiat honorem,—et propter hoc illi quidem decimas suorum habebant consecratas: qui autem perceperunt libertatem, omnia quæ sunt ipsorum ad

dominicos decernunt usus, hilariter ac libere dantes *ea quæ non sunt minora utpote majorem spem habentes.*"

I next proceed to consider the use of this word by Origen, an. 200, thus translated by Comber, chap. iv. sect. 1. p. 64. (Origen in Numer. Hom. xi.) "It is fit and profitable to offer *first-fruits* to the priests of the gospel also; for so hath the Lord ordained, that they who preach the gospel should live of the gospel. And as this is just and decent, so, on the contrary, I think it indecent, unworthy, and impious, that he who worships God, and enters his house, who knows the ministers and priests wait at the altar, and serve to the preaching of the word and the ministries of the church, should not offer to the priests the first of those fruits which God hath given by his making the sun to shine and the rain to fall,—such a soul seems to me to have no remembrance of God, nor to think or believe he gave those fruits, since he hoards them up as if God had nothing to do with them; for if he believed them God's gifts, he would know he ought to honour God with his gifts and blessings, in rewarding the priests. And that we may be further taught by God's own words that these things are to be observed according to the letter, let us further note, the Lord saith in the gospel, 'Woe to you, Scribes and Pharisees, hypocrites, who give tithes of mint, annise, and cummin, but omit the greater things of the law; ye hypocrites, these things ought ye to have done, and not to have left the other undone.' Mind well how the word of the Lord would by all means have the greater things of the law done, but so as these things which are intended to stand according to the letter, be not omitted. But if you say, this is said to the Pharisees, not to his disciples, hear him again saying to his disciples, 'Except your righteousness exceed the righteousness of the Scribes and Pharisees, ye shall not enter into the kingdom of heaven:' what therefore he would have done by the Pharisees, much more abundantly would he have that fulfilled by his disciples; but what he would not have to be done by his disciples, he would not bid the Pharisees do. How, therefore, doth my righteousness exceed the righteousness of the Scribes and Pharisees, if they dare not taste of the fruits of the earth before first-fruits are offered to the priests, *and tithes* set apart

for the Levites; and I doing neither of these, do so use the fruits of the earth that the priest knows not of them, the Levite is not acquainted with them, and the altar receives no part from them. On these grounds he thus concludes: This we say to prove that the law of first-fruits of fruits and cattle ought to stand according to the letter."

Comber (part i. chap. 4. p. 63.) infers from Irenæus, in the last quoted passage above, that *first-fruits* were paid in the proportion of a *tenth* at least; and he says, "that it seems Irenæus believed none ought to give less than a tenth to God, and that those who would go to the highest point of duty, ought to dedicate all they had." If this be the sense of Irenæus in the passage before us, "ad dominicos usus" must, as Comber observes, (part ii. chap. 4, p. 49, 50,) signify "even all that concerns the Lord's service, and the maintenance of His ministers, as well as the alms given to the poor." Irenæus appears to be drawing an analogy from the precepts of the Mosaic law, and applying them in a spiritual and more extensive sense to christians. The whole of the passage is as follows: "Offerre igitur oportet Deo primitias ejus creaturæ, sicut et Moyses ait, *Non apparebis vacuus ante conspectum Domini Dei tui;* ut in quibus gratus exstitit homo, in his gratus ei deputatus, eum qui est ab eo percipiat honorem. Et non genus oblationum reprobatum est; oblationes enim et illic, oblationes autem et hic: sacrificia in populo, sacrificia et in ecclesiâ: species immutata est tantum, quippe cum jam non â servis, sed a liberis offeratur. Unus enim et idem Dominus; proprium autem character servilis oblationis, et proprium liberorum, uti et per oblationes ostendatur indicium libertatis. Nihil enim ociosum, nec sine signo, neque sine argumento apud eum. Et propter hoc illi quidem decimas suorum habebant consecratas: qui autem perceperunt libertatem, omnia quæ sunt ipsorum ad dominicos decernunt usus, hilariter et libere dantes ea, non quæ sunt minora, utpote majorem * spem habentes; vidua illâ et paupere hic totum victum suum mittente in gazophylacium Dei. Ab initio enim respexit Deus

* [*Majorem.*] In Feuard. marg. atque Voss. extat *majorum*, et ita bene.— Note at the foot of the page in Grabe's Edition of *Irenæus adv. Hæreses.*

ad munera Abel, quoniam cum simplicitate et justitia offerebat," etc. . . . . Irenæus adduces this instance in pursuance of the main object of this chapter, which is entitled, " De sacrificiis et oblationibus, et qui sunt qui in veritate offerunt." And in application of this to the christian church, he further proceeds, " Quoniam igitur cum simplicitate ecclesia offert, juste munus ejus purum sacrificium apud Deum deputatum est. Quemadmodum et Paulus Philippensibus ait: *Repletus sum acceptis ab Epaphrodito, quæ a vobis missa sunt, odorem suavitatis hostiam acceptabilem, placentem Deo.* Oportet enim nos oblationem Deo facere, et in omnibus gratos inveniri fabricatori Deo, in sententia pura et fide sine hypocrisi, in spe firma, in dilectione ferventi, primitias earum quæ sunt ejus, creaturarum offerentes. Hanc oblationem ecclesia sola pura offert fabricatori, offerens ei cum gratiarum actione ex creatura ejus."

* * * * *

And lastly, after speaking of the offering of the Eucharist, he thus concludes: " Offerimus autem ei, non quasi indigenti, sed gratias agentes Dominationi ejus, et sanctificantes creaturam. Quemadmodum enim Deus non indiget eorum quæ à nobis sunt, sic nos indigemus offerre aliquid Deo; sicut Salomon ait, *Qui miseretur pauperi, fœneratur Deo.* Qui enim nullius indigens est Deus, in se assumit bonas operationes nostras, ad hoc ut præstet nobis retributionem bonorum suorum; sicut Dominus noster ait, *Venite benedicti Patris mei, percipite præparatum vobis regnum. Esurivi enim, et dedistis mihi manducare: sitivi, et potastis me: hospes fui, et collegistis me: nudus, et cooperuistis me: infirmus, et visitastis me: in carcere, et venistis ad me.* Sicut igitur non his indigens, attamen a nobis propter nos fieri vult, ne simus infructuosi: ita ad ipsum verbum dedit populo præceptum faciendarum oblationum, quamvis non indigeret eis, ut disceret Deo servire; sicut et ideo nos quoque offerre vult munus ad altare frequenter sine intermissione. Est ergo altare in cœlis, (illuc enim preces nostræ, et oblationes nostræ diriguntur,) et templum, quemadmodum Joannes in Apocalypsi ait, *Et apertum est templum Dei;* et tabernaculum, *Ecce enim,* inquit, *tabernaculum Dei, in quo habitabit cum hominibus.*" (Apocal. xi. 19; xxi. 3.) Grabe observes upon the first part of this

extract—" Missa Feuardentii hoc loco de primitiis digressione, Irenæo gemina solum e corpore canonico Distinct. I. de consecrat. cap. 69, verba adduco: *Omnis Christianus procuret ad missarum solennia aliquid Deo offerre, et ducere ad memoriam, quod Deus per Mosen dixit: Non apparebis in conspectu meo vacuus.*"

But that first-fruits were paid *abundantly*, appears by the regulations made for them in the Apostolical canons, and from which Comber observes, " that they alone sufficed to maintain the superior clergy honourably," and enabled them " to dispense the tithes to the lower clergy and the poor." I shall therefore add Bingham's observations upon the *use* of the payment of first-fruits, as related in book v. chap. 5, sec. 4; where, speaking of the " original of first-fruits, and the manner of offering them," he says, " There is one part more of church revenues whose original remains to be inquired into—and that is first-fruits, which are frequently mentioned in the primitive writers. For not only those called the Apostolical canons and constitutions speak of them, as part of the maintenance of the clergy; but writers more ancient and more authentic, as Origen and Irenæus, mention them also as oblations made to God. Celsus, says Origen, would have us dedicate first-fruits to demons: *but we dedicate them* to Him who said, ' Let the earth bring forth grass, the herb yielding seed, and the fruit-tree yielding fruit after his kind.' *To whom we give our first-fruits,* to Him also we send up our prayers, having a great High-Priest that is entered into heaven, &c. In like manner Irenæus says, Christ taught his disciples to offer first-fruits of the creatures to God; (and reference is given to Iren. lib. iv. cap. 32 & 34. Of the former passage, the primary application is to the oblation of the Eucharist, though it possibly embraces the scope of c. 34. I shall quote the passage itself at length: —" Sed et suis discipulis dans consilium, primitias Deo offerre ex suis creaturis, non quasi indigenti, sed ut ipsi nec infructuosi nec ingrati sint, eum qui ex creatura est panis, accepit, et gratias egit, dicens, *Hoc est corpus meum.* Et calicem similiter qui est ex ea creatura, quæ est secundum nos, suum sanguinem confessus est, et Novi Testamenti novam docuit oblationem; quam Ecclesia ab Apostolis accipiens, in universo

mundo offert Deo, ei qui alimenta nobis præstat, primitias* suorum munerum in novo Testamento, de quo in duodecim Prophetis Malachias sic præsignificavit: *Non est mihi voluntas in vobis, dicit Dominus omnipotens, et sacrificium non accipiam de manibus vestris. Quoniam ab ortu solis usque ad occasum nomen meum glorificatur inter gentes et in omni loco incensum† offertur nomini meo, et sacrificium purum: quoniam magnum est nomen meum in Gentibus, dicit Dominus omnipotens:* manifestissime significans per hæc, quoniam prior quidem populus cessabit offerre Deo; omni autem loco sacrificium offeretur Deo, et hoc purum; nomen autem ejus glorificatur in Gentibus.") *And that this was the church's continual oblation for the enjoyment of all the rest.* Which implies, either that they had a particular form of thanksgiving, as there is both in the Greek and Latin rituals; or else that these first-fruits were offered with other oblations at the time of the *Eucharist.* However this be, it is evident, that as they were principally designed for agnizing the Creator, so they were, secondarily, intended for the use of His servants. And therefore we find the Eustathian heretics censured by the Synod of Gangra, an. 324, for that they took the first-fruits, which were anciently given to the church, and divided them among the saints of their own party (Conc. Gangr. in præfat., where these offerings are called καρποφοριας εκκλησιαστικας); in opposition to which practice, there are two canons made by that Council (7 & 8), forbidding any one to receive or distribute such oblations out of the church, otherwise than by the directions of the bishop, under pain of excommunication. Some other rules are also given by one of the Councils of Carthage, inserted into the African code, concerning these first-fruits, that they should be only of grapes and corn; which shews that it was also the practice of the African church. Nazianzen likewise mentions the first-fruits of the wine-press and the floor which were to be

* Ita panem et vinum Eucharisticum iterum iterumque appellat Irenæus, quia Judæi olim primos agrorum et vinearum proventus, Deo offerendos ita vocabant.—Note from Grabe.

† Irenæus, in the next chapter, thus explains the incense here spoken of—"Incensa autem Joannes in Apocalypsi, *orationes* esse ait *sanctorum.*" (Cap. v. 8.)

dedicated to God. And the author of the Apostolical Constitutions has a form of prayer, επικλησις επι απαρχων, an invocation upon the first-fruits, to be used at their dedication. So that it seems very clear, that the *offering* of first-fruits was a very ancient and general *custom* in the christian church, and that this also contributed something towards the maintenance of the clergy."

I next proceed to Bingham's further observations, in book xv. chap. 2, sect. 3, upon "what oblations might be received at the altar, and what not," as this nearly concerns my present argument: and his instances of the distinction made between the *first-fruits* which might be brought to the altar, and those which were to be sent home to the bishop or priests; together with the remarks upon the light in which such as were allowed to be received at the altar were viewed, may serve to explain the meaning of Zonaras, in the passage which I have quoted from him in page 34: when speaking of the offering of first-fruits which might be brought to the altar, he observes, "Veruntamen non ut *sacrificia isthæc* offerri, sed *tanquam primitias* tempestivorum precociumque fructuum." And also that of Polydore Vergil, which I have quoted in p. 29, and from which custom our Anglo-Saxon lammas, *i. e.* loafmas-day, seems to be derived. Bingham says, "the most ancient custom was only to offer such things at the altar as were proper for the service of the altar. To this purpose there are several canons amongst those called the apostolical canons. One says — "No bishop or presbyter, under pain of deposition, shall offer any thing in the sacrifice on the altar contrary to the Lord's command, as honey, milk, or strong beer, instead of wine, or birds, or living creatures, *excepting* only the first-fruits of grapes and corn in their proper season. Another forbids any thing to be brought to the altar besides oil for the lamps, and incense in the time of the oblation. And a third orders all other first-fruits to be carried home to the bishops and presbyters, to be divided between them and the deacons, and the rest of the clergy. Some of the African canons are to the same purpose. The third council of Carthage orders that, in the sacrament of the body and blood of the Lord, nothing else be offered but what

the Lord commanded, that is, bread and wine mingled with water: nor in the oblation of first-fruits, any thing more be offered but only grapes and corn. The collections of African canons, both Greek and Latin, give us this canon a little more at large, in these words:—"Nothing shall be offered in the sacrament of the body and blood of the Lord, but what the Lord himself commanded, that is, bread and wine mingled with water. But the first-fruits, and honey and milk, which is offered on one most solemn day of the mystery of infants, though they be offered at the altar, shall have their own peculiar benediction, that they may be distinguished from the sacrament of the body and blood of the Lord. Neither shall any first-fruits be offered, but only of grapes and corn. Here we see milk and honey was only to be offered on one solemn day, that is, on the Great Sabbath, or Saturday before Easter, which was the most solemn time of baptism; and that for the mystery of infants,—that is, persons newly baptized, who were commonly called infants, in a mystical sense, from their new birth, in the African church; for it was usual to give them a taste of milk and honey immediately after their baptism, as has been shewed in a former book (book xii. chap. 4. n. 6.); and, upon that account, an oblation of honey and milk is here allowed to be made for this mystery of infants, which was to be offered and consecrated with a peculiar benediction, that it might not be thought to come in the room of the *Eucharist.* And no other first-fruits are allowed to be offered at the altar but only grapes and corn, as being the materials of bread and wine, out of which the Eucharist was taken. In the time of the Council of Trullo, the offering of milk and honey at the altar was universally forbidden (Can. 57). But the oblation of the first-fruits of grapes was still allowed: only, whereas a corrupt custom prevailed in some places to join them in the same *sacrifice* with the Eucharist, and distribute them together with it to the people, the rule of the African code is revived, and order given (ibid. can. 28.) that they shall have a distinct consecration and a distinct distribution, if the people were desirous to eat their first-fruits in the church. In the mean time we may observe, that in other Churches, not only the first-fruits of grapes and corn,

but all other things which the people were voluntarily disposed to offer, whether money or the like gifts, were received at the altar."

And again, (book v. chap. 4. sect. 2. p. 256,) speaking of the weekly or daily oblations that were made at the altar, he observes, these "were such as every rich and able communicant made at his coming to partake of the Eucharist, when they offered not only bread and wine, out of which the Eucharist was taken, but also other necessaries, and sometimes sums of money for the maintenance of the church and relief of the poor."

I request that these observations may be particularly borne in mind; and in explanation of what I have said (p. 45) of offerings, "in missis solemnibus," I shall conclude with the following summary regarding oblations, from *Palmer's Antiquities of the English Ritual*, vol. ii. p. 67, et seq. He says, "There can be no doubt that it has been the universal custom of Christians since the apostolic age to offer alms and oblations to the glory of God. In the writings of the primitive fathers, and the acts of synods, we find this practice recognised throughout the whole world . . . . . These oblations were of various sorts. Some offered money, vestments, and other precious gifts; and all, it appears, offered bread and wine, from which the elements of the sacrament were taken. But though all the churches of the east and west agreed in this respect, they differed in appointing the time and place at which the oblations of the people were received. In the west, the people offered bread and wine in the public assembly, immediately after the catechumens were dismissed, and before the solemn prayers began. We have no authentic record of the prevalence of any such custom in the east. It appears that the oblations of the people were made, in the eastern churches, before the liturgy began, or at least not during the public assembly. No trace of the western oblation of the people and offertory is found in the ancient liturgies of Antioch, Cæsarea, Constantinople, and Alexandria. It is not alluded to by the apostolical constitutions, nor by the fathers of the eastern churches. From whence it may be concluded, either that the oblations of the people were not made during the liturgy of the eastern churches; or

else that the custom has been very long discontinued. In the churches of Gaul, Spain, Rome, Milan, and England, the people long continued to offer during the liturgy, and memorials of the custom remain to this day in most parts of the west. In the councils and writings of the fathers of those churches, we find many allusions to it, many injunctions regulating it. In time, when the clergy received donations of a more permanent nature, the oblations of the people fell off. In many places they became extinct, and in the rest there remained little more than the shadows and memorials of the primitive customs. Oblations are now, in general, never made by the laity in the Roman liturgy; yet, in some remote parts, the country people, according to Bona, still continue the practice. (*Bona, Rer. Lit.* lib. ii. cap. 8, § 8.)

"In the church of Milan, which has retained its peculiar rites for a long series of ages, and which did not receive the alterations made in the Roman liturgy by Gregory the Great, A. D. 590, the custom of offering bread and wine is still in some degree preserved. At the proper time, the officiating priest, accompanied by his assistants, and preceded by two attendants with silver vessels to receive the oblations, descends from the altar to the entrance of the presbytery, where two old men of the school of St. Ambrose, attended by all their brethren, offer three cakes of bread, and a silver vessel full of wine. The priest and his attendants then descend to the entrance of the choir, where they receive the same sort of oblations from the women. (*Bona, Rer. Lit.* lib. i. cap. 10, § 3.)

"In England the people have been accustomed to offer oblations since the time of Augustine, who wrote, in A.D. 601, to Gregory, patriarch of Rome, to consult him how the oblations of the people (quæ . . . . accedunt altario) should be divided; but we can have no doubt that in the British church the same practice had prevailed long before, since no western church can be named in which the people had not made oblations from the most primitive ages. A synod also, held in Ireland in the time of Patrick, first archbishop of the Irish, in the fifth century, forbids the oblations of sinning brethren to be received. This shews that the practice of lay oblation prevailed then in

Ireland. In England the oblations of the people gradually became less as the church was endowed with lands, and different rules as to the payment of offerings were adopted in different places.

"In 1287, the synod of Exeter, cap. 9, required all priests celebrating the communion in chapels annexed to churches, to restore fairly whatever oblations they received to the rector of the church (ecclesiæ matricis rectori). Henry Woodloke, bishop of Winchester, in his Constitutions of A.D. 1308, enjoined every person above eighteen years of age, who had sufficient means, to offer due and customary oblations on four great feast-days in the year (nativitatis, scilicet, paschæ, festivitate sancti loci, et dedicationis ecclesiæ).

"In 1367, Simon Langham, archbishop of Canterbury, took measures to try a dispute between the clergy of London and the citizens, who were unwilling to pay the oblations, which the clergy alleged to be due from every house in proportion to its value. (*Wilkins*, tom. iii. p. 67). We also find the subject alluded to in other canons of the English and Scottish churches.

"Thus the custom of lay oblation was continually kept up, in some degree, in England, till the time when the Reformation at last began, and then we find the church continuing and reenforcing it. The English liturgy, in the year 1549, contained this rubric: — 'In the mean time, while the clerks do sing the offertory, so many as are disposed shall offer to the poor man's box, every one according to his ability and charitable mind; and at the offering-days appointed, every man and woman shall pay to the curate the due and accustomed offerings.' Afterwards the rubric was amended to its present form, in which the deacons, or the officers of the church, are required to collect the alms and devotions of the people: and the custom of oblation is to this day preserved in the Church of England, having never been intermitted from the most primitive ages."

At North-Witham, in Lincolnshire, amongst other items in the *Valor Eccles.*, and immediately following the oblations "in quatuor diebus," is one, "þ le wax-shot, iii^{s}." Spelman says, "*Wax-shot*, opinor ceragium, quod ceræ nomine pen-

ditur, sive in ecclesiis ad luminarium sustentationem, sive in alio ministerio. Wax-shot, Sax. leot gescot, *i.e.* luminarium census, seu pecunia. Commissio antiq. in archiv. Episc. Lincoln. tempore Hen. Beauford, ibid Episc., ceragia vulgariter vocata *wax-shots*. Synod Sax. Enamens. circa anno Dom. 1009, leoght gescot ðriþa on geape, &c., *i.e.* luminarium census, ter in anno reddatur.

"In Latino ejusdem exemplari: lumina etiam cereorum ter in annis singulis reddantur, augeantur, reparentur. Synod Bracarnens. A.D. 610, al. 684, cap. ii. Episcopus *tertiam partem ex* quacunque oblatione populi, in ecclesiis parochialibus requirat: sed illa tertia pars in luminaribus ecclesiæ; vel recuperatione (forte reparatione), servetur, et per singulos annos Episcopo inde ratio fiat."

Mr. Hale, in his Essay on the Quadripartite and Tripartite Division of Tithes, has the following passage from the Parisian Editor of the Councils: "Statuitur Concilio Bracarnense ii. cap. 2: 'Tertiam partem pro luminaribus Ecclesiæ esse relinquendam et reparatione basilicarum, rationemque ejus Episcopo reddendam,' unde et redditus fabricæ episcopo subduntur."

Spelman says further of this wax-shot, "Ceragium hoc est tributum quod in Ecclesiis pendebatur ad subministrationem ceræ et luminarium. Wax, *cera*, shot, *symbolum*. Hac autem solutione multi se contendunt immunes esse a minoribus quibusdam decimis persolvendis. Ejusdemque generis sunt quæ alias cock et wax, alias maine-port, appellantur. (Vide *Ll: Can. Eccl.* cap. xii.) Consuetudines intelligo Lincolniensibus prope Stanford: Cestrensibus etiam et aliis notæ. q."

From the same author:—"Maine-port: Tributum exiguum, quod quibusdam locis parochiani solvunt rectori ecclesiæ in compensationem quarundam Decimarum. (Vide *Wax-shot.*) Vicaria de Wragby (Lincoln) consistit in toto altaragio et in ceragio vulgariter dict.: wax-shot, in PANIBUS vulgariter dict. *mainport*, et in incremento denariorum S. Petri vulgariter dict. *fyerharth.*"—*Spelman Gloss. in voc.*

I must now quote the passage which has given rise to the foregoing remarks, at length, from Mr. Soames' work upon the Anglo-Saxon Church, p. 80, which contains the following allegation, upon which his argument is founded for the church-

shot being the *legal* origin of church-rates; viz. that it was a commutation or legislative provision for the sacramental elements and like demands of our holy profession, "anciently provided for by oblations upon the altar;" for such I conceive to be Mr. Soames' argument, and which is confirmed by his own observations in pages 25, 26, and 27 of his preface, with which I shall commence. His words are, (p. 25): "Besides tithes, however, the ancient religious foundations in our parishes are endowed with rent-charges to repair the church, and to supply the exigencies of public worship. It certainly does not appear that these are anterior to the Saxon conversion: they plead no higher authority, then, than that of ancient legislation; this plea they can powerfully urge. *Church-shot* was imposed by Ina (see p. 80); and, in all probability, if his legislature did not follow here a known and approved precedent, its own example quickly acted upon every kingdom of the Heptarchy. Alfred accordingly stipulated with Godrun, that, in addition to tithes, *light-shot* and *plough-alms* should be regularly paid by the new Danish proprietors." And in a note to p. 151 of his book here referred to, Mr. Soames further says, "The *light-shot* of Alfred's code may answer, perhaps, to the *church-shot* made payable, under a heavy penalty, by the laws of Ina. The plough-alms are thought to have been an offering made to the church, in proportion to the number of plough-lands holden by the payers. This due is not mentioned by name in Alfred's own treaty with Godrun, as now extant: we find specified there only tithes, Rome-fee, light-shot, and *Dei rectitudines aliquas.* In the renewal of this treaty, however, under Edward the Elder, plough-alms are inserted." Selden seems to confound these with the Rome-fee: but might not the expression 'Dei rectitudines aliquas' not only include these, but also the church-shot; and thus the inference of Mr. Soames of its being perhaps the same as the light-shot, because it is not specified, be obviated? But this I must submit for the present, as I shall have occasion to return to this subject again.

To proceed with Mr. Soames' observations: "It is true that parochial collectors have long ceased from applications for *church-shot, light-shot,* and *plough-alms.* Those who delight in throwing unworthy imputations upon the Church, may be

at a loss to account for this forbearance. Such as would reason calmly upon known facts, will probably view the modern *church-rate, raised for the very purposes* answered by these ancient payments, as merely their successor and representative. That rate is no offspring, then, of some blind prescription, but as regularly derived from legislative acts, yet extant, as any other public burden." This is quite definite, and appears to mark Mr. Soames' meaning in p. 80, where we read, "The Laws of Ina record also England's earliest known enactment for supplying the exigencies of public worship, anciently provided for by oblations upon the altar. When whole communities became christian, such contributions would not only be precarious, but also often most unfairly levied. Ina's legislature wisely therefore commuted voluntary offerings for a regular assessment upon houses. Every dwelling was to be valued at Christmas; and the rate so imposed, called CHURCH-SHOT, was payable on the following Martinmass. Money being scarce, the payment was made in produce, usually in grain or seed, but sometimes in poultry. Defaulters were to be fined forty shillings, and to pay the church-shot twelve-fold. *This* pious care of divine ministrations may be considered as the *legal* origin of *church-rates*. Thus, earlier than almost any of English written laws, appears on record *a legislative provision for the sacramental elements, and like demands of our holy profession.*"

Bingham, as I have already shewn, states that there were oblations at the altar anciently for these purposes, and besides the primitiæ. And I shall now endeavour to show that there were oblations also in our own church, and distinct from the church-shot, which I have endeavoured to identify with the primitiæ, for the supply of the sacramental elements, and in part also for like demands of our holy profession.

Among those offerings which it was lawful by the apostolical canons to bring to the altar, mention is made of oil for the lamps; and the light or wax-shot of the Anglo-Saxon laws, which was levied upon each hide-land, and payable thrice in the year, appears to have been a commutation or legislative provision for this ancient requisite of public worship.

And with regard to the provision for the supply of the sacra-

mental elements, Mr. Goode, in his second edition of the History of Church-rates, p. 34, observes, "By an incidental notice in the 10th canon of the Council of Chalchythe, an. 785, we also learn that the people provided the bread for the sacrament of the Lord's Supper; for it is there ordered, speaking of that sacrament, 'Let bread be offered by the faithful, not crusts' (oblationes quoque fidelium tales fiant, ut panis sit, non crusta, *Wilkins*, lib. i. p. 147): upon which Johnson remarks, 'It seems plain that hitherto the people here in England brought to church and offered the eucharistic bread; and that therefore it was not provided either by the priest or any other officer.'"

Wheatly, in his observations upon the 7th rubric of our ritual in the Communion-service, which is a direction *how* the bread and wine is to be provided, observes, "How they were provided in the primitive church I have already shewed," viz. out of the people's oblations of bread and wine. "Afterwards, it seems, it was the custom for every house in the parish to provide in their turns the holy loaf,—under which name, I suppose, were comprehended both the elements of bread and wine; and the *good-man* and *good-woman* that provided were particularly remembered in the prayers of the church."

This latter custom appears to have continued till the Reformation, when some alterations were made in regard to it, and to which I shall advert by-and-bye.

It appears therefore that there were distinct oblations, both in the early church and in our own, for the supply of the sacramental elements and like demands of our holy profession, besides the *primitiæ* in the former, and the church-shot in the latter; and consequently that no valid argument can be drawn in favour of the church-shot being the legal origin of church-rates, upon the allegation of its being a commutation or legislative provision for those purposes. But it does appear that a very strong argument may be drawn in favour of the *legislative* origin of church-rates from the regulations made for the payment of the *light-shot*, which was a charge upon the land, and from the *church-bote*, which appears to have been for general church purposes; both of which occur in the laws *of our Saxon* kings.—See Mr. Goode's pamphlet, who has pur-

sued this view of the subject, and *thus* shewn church-rates to be a common law liability.

The alterations made in the mode of providing for the sacramental elements after the Reformation, are thus stated by Wheatly, on the seventh rubric in the communion-service:— "By the first book of king Edward, the care of providing was thrown upon the pastors and curates, who were obliged continually to find, at their own costs and charges, in their cures, sufficient bread and wine for the holy communion, as oft as their parishioners should be disposed for their spiritual comfort to receive the same. *But then* it was ordered that, in recompense of such costs and charges, the parishioners of every parish should offer every Sunday, at the time of the offertory, the just value and price of the holy loaf (with all such money and other things as were wont to be offered with the same) to the use of the pastors and curates, and that in such order and course as they were wont to find, and pay the said holy loaf. And in chapels annexed, where the people had not been accustomed to pay any holy bread, they were either to make some charitable provision for the bearing of the charges of the communion, or else (for receiving of the same) resort to the parish church. But now, since, from this method of providing, several inconveniences might, and most probably did arise, either from the negligence, or obstinacy, or poverty of the parishioners; it was, therefore, afterwards ordered, that the bread and wine for the communion should be provided by the curates and churchwardens at the charges of the parish; and that the parish should be discharged of such sums of money, or other duties, which heretofore they have paid for the same, by order of their houses, every Sunday. And this is the method which the Church still uses; the former part of this rubric being continued in our present communion office, though the latter part was left out, as having reference to a custom which had for a long while been forgotten." And again, upon the eighth rubric, speaking of the "ecclesiastical duties accustomably due," and to be paid for at Easter, (after stating that Bishop Stillingfleet supposes these *duties* to be a composition for personal tithes,) Wheatly adds, "But the present Bishop of Lincoln imagines them to be partly such duties or oblations

as were not immediately annexed to any particular office; and *partly* a composition for the *holy loaf*, which the communicants were to bring and offer, and which is therefore to be answered at Easter, because at that festival every person was, even by the rubric, bound to communicate."

But I must now, in concluding, briefly state the grounds of my own argument in favour of the church-shot of Ina being identical with the primitiæ, and the LEGAL origin of the tithes in London. And here I must at once request it may be understood, that I do not bring any argument from the fact of the church-shot of Ina, in Wessex, being a contemporary law with that regulation of Wihtred, in Kent, for the church-bote: neither can I produce any evidence of the payment of church-*bote* in Wessex, in the time of Ina, or of the church-shot in Kent, in the time of Wihtred. But I do not conceive this to be at all essential to my present argument; and I have already stated, p. 31, that church-*bote* has not so technical a meaning in the laws of Wihtred, A. D. 692 or 694, as in the laws of Edmund and Canute, but appears to be a very general expression, (Dr. Ingram translates it, "for the *advantage* of God's churches,") and to include the provision for the clergy. I do not, however, consider the church-shot of Ina and the church-bote of Wihtred to be *identical*, because I believe the church-shot to have been a provision for the *clergy* only; unless, indeed, a liability can be proved to attach to this due, as a distinct oblation, or in common with all oblations, towards church repair *in England*. My argument is briefly this,—that, whatever may have been the regulations and laws in the separate kingdoms of the Heptarchy, the laws of our Saxon monarchs, especially those of Edmund and Canute, *distinguish* between *church-shot*, *light-shot*, and *church-bote;* and that Canute enjoins the payment of church-shot under the same penalty as Ina does, which was to go to the bishop, but with a greatly increased fine to the king;—which facts seem both to identify *it* with the CHURCH-SHOT of Ina, and to shew that it had not *diminished*.

This is of much importance, because Dean Comber, in his observations upon this due, appears to confound it with tithes, as he does also the Greek canonica, though both are termed

primitiæ. His words are—speaking of the church-shot of Ina, in his observations upon the law of Edmund, A. D. 940, for tithes and church-shot—"As for the syric-sceat, or mensura bladi [not tritici, but] triturati du blè batû, in Fleta (*Fleta*, lib. i. cap. 47), which that author saith was paid to the church even from the time of the Britons; it may not be improbable it was a sort of tithe at first, *if the measure varied according to the proportion of the crop;* but afterwards, when a regular tithe was paid, *this* seems to have been retained as a kind of first-fruits of the threshing-floor, and was paid beside the tithe." (*Comber*, part i. chap. viii. p. 172.) Fleta himself appears to have given the first hint of a change, which I have before considered in p. 19.

Comber himself has the following statement in part i. c. 9. p. 183-4:—"Fleta [cited before] assures us, the cyric-sceat, or first-fruits of threshed corn, was paid to the churches in the Britons' time; and since other testimony declares they paid tithes, either this quantity of seed was paid in the proportion of a tenth, or was paid besides tithes, as it was among the Saxons afterwards." It has been kindly pointed out to me by a highly-esteemed friend (while this sheet was passing through the press), that at p. 19, I have made Du Cange appear as expressing an opinion of his own upon this due, which he does not seem to have done, and that I have not sufficiently indicated that the passage which I have there quoted is from Fleta. I take the present opportunity, therefore, of correcting this, and a like expression in p. 33, and also of transcribing the whole of what Du Cange says, as it supplies matter for some observations which I had before omitted for the sake of brevity.

"*Ciricsetum*, Cyricsceat, Circsot, Chircheset, &c. Vectigal ecclesiasticum, ex Saxon. *cyric*, ecclesia, basilica, κυριακον, et sceat census, vectigal. Glossar. ad Leges. Anglic. cyricseat, *ecclesiæ census.*

"Alii à cyric et sæd deducunt. Est autem sæd Saxonibus *semen*. Ita cyricsæd, erit *semen ecclesiæ*, quod alii passim vertunt *primitias seminum*. Kanutus, rex Danorum, apud Ingulfum, p. 894, Radulfum de Diceto, an. 1031. Willelmum Malmesbur. de Gest. Angl. lib. ii. cap. 11, et Florent.

Wigorn, p. 621. *Et mediante Augusto* (solvantur) *decimæ frugum, et in festivitate Sancti Martini primitiæ seminum ad ecclesiam, in cujus parochia quisque deget, quæ Anglice cyricsceat appellantur.* (Charta Margaritæ Comitissæ Warwici, in Hist. Harcur. tom. iv. p. 2223. *Sciatis me dedisse . . . Monachis præfatis totam decimam de agnis, caseis, et velleribus, et de porcellis, et de pasnagio, et de vitulis, et de ruschis, et de faldranis, et de chiricsetis*). Cujusmodi autem esset is census, docet Fleta, lib. i. c. 47. § 27. *Chirchesset, certam mensuram bladi tritici significat, quam quilibet olim sanctæ ecclesiæ die S. Martini, tempore tam Britannorum quam Anglorum contribuerunt.*

"Leges Inæ Regis West-Saxiæ, cap. 4. *Cyric-sceatta reddita sint in festo St. Martini; si quis hoc non compleat, sit reus* 60 *solidorum, et duo decuplo reddat ipsum ciric-seattum.* Et cap. 63, *cyric-seattum debet reddere homo à culmine et mansione ubi residens in Natali.* Leges Henrici I. cap. 11. *Qui cheriscatum tenebit ultra festum S. Martini, reddat eum Episcopo et undecies persolvat et Regi* 1 *solid.* Perperam apud Malmesburiensem editum *Curescet.* Plures tamen magnates post Romanorum adventum illam contributionem secundum veterem legem Moysi, nomine primitiarum dabant; prout in brevi regis Kanuti ad summum pontificem transmisso continetur, in quo illam contributionem *chircsed* appellant, quasi semen ecclesiæ. Et vetus scheda Gallica apud Lambardum: *Chirseed, ou Chirceomer, ou Chirceamber, fut un certein rent de bled batu, que chescun home devoit al temps des Brytons et des Anglez porter à lour Eglise le jour Seint Martin.*

"Verum Spelmannus, Welocus, Somnerus, et alii linguæ Saxonicæ peritiores hanc damnant interpretationem, priorem-que amplectuntur. Vide *Concilium Ænhamense*, an. 1009, can. 11; *Monasticum Anglic.* tom. ii. p. 986, et infra, *Eleemosyna aratri.* [Observat Kennettus in Glossario ad calcem Antiquitat. Ambrosden voces has, Ciriscetum, etc., non modo sumtas fuisse pro *blado*, sed etiam pro volatilibus aliisque similibus rebus ecclesiæ solutis; sic in Inquisitione reddituum Abbatis Glastonbur., an. 1201. *Manerium Glaston.* reddit per an. in gabulo vii. lib. vi. sol. 10. den . . . . . In church-scet LX gallinas et semen frumenti ad tres acras.]"

See *Du Cange*, "*Glossarium ad Scriptores*," in loco, from which this is a true copy from the Benedictine Edition of 1733.

I have, in pp. 20 and 47, made some observations upon the identity of the *church-sceat* and the *primitiæ*, to which I beg now to refer: and I am not aware of any sufficient authority for the conclusion that Lambard was influenced in his interpretation of the church-sceat of Ina, by any substitution of sæd for sceat.

The Letter of Canute has the word *church-sceat*, which is there also interpreted as "primitiæ seminum." And Lambard quotes a passage in which *church-amber* and *church-omer* are synonymous with *church-seed*.

The author of Historical Remarks upon Church-Rates, in p. 15, speaking of this quotation of Lambard's, "from a very old French writer, who lived while the meaning of these words was still well understood," observes: "Now this is a very valuable passage, because it proves that it was not a mistake of the Frenchman of *church-seed* for *church-scet*, as some people have thought, since he gives it another name, which he could not have got at by any mistake of letters; he calls it *church-seed* or *church-amber*. Now an *amber* was exactly such a two-handled vessel as we yet measure corn with; and from this it appears, that the *church-shot* was also sometimes called *church-bushel* or *church-peck*, or whatever the exact measure may have been: but it also proves, whether the measure were great or small, it was still a measure of some kind of corn." (Spelman however, under *Firma*, quotes "Cerviciæ, et Butyri, ambr." from the Laws of Ina.) And again, in a note, p. 28, the first-named author says, "In the preface to Lambard's own edition of the Archacanonica, or Ancient Saxon Laws (printed by Day, in 1568), the following passage was quoted: — 'Chirseed, ou chirceomer, ou chirceamber, fut un certein rent de blé batu que chescun home devoit al temps des Brytons et des Anglez porter a lour eglise le jour Seint Martin.' This passage however was not quoted by Abraham Wheloc in the Cambridge reprint of 1644, though without quoting it, he chose to sneer at it, and to reject Lambard's rendering of *cyric-sceat* in the words of Florence, viz. 'primitiæ seminum,' and to substitute for it *census ecclesiasticus*,

which he supposed meant something else. It is, nevertheless, quite certain, that whether called *cyric-sæd, cyric-sceat, cyric-amber, primitiæ seminum,* or *census ecclesiasticus,* it meant one and the same thing, viz. a portion of corn, &c. (It was not however confined to corn.) Du Cange, in voce *Ciric-setum,* quotes the French words 'un certein rent;' upon what authority I cannot say."

It appears then, as I have before observed in p. 47, most reasonable to conclude, that *census ecclesiasticus* is the right translation of *cyric-sceat,* which is so rendered by Brompton, and *primitiæ seminum* the explanation of it, which clearly appears from the Letter of Canute above quoted.

Collier, in his Ecclesiastical History, adopts the view of Wheloc: he says—"Chirch-sceat (the first-fruits of seeds, or the church-dues arising from the produce of corn, &c.) to be paid at the feast of St. Martin." . . . . .

The first-fruits of seeds, or "cyric-sceatta," seems to have some difficulty in it. Lambard translates it "primitiæ seminum;" but the learned Wheloc, in his Epistle to the Reader (before Lambard's Archacanonica), makes it appear that *cyric-sceatta* comprehends the church-dues in general, whether arising from corn or any other branch of tithes. It is true these dues are called *church-seeds* in some manuscripts; but Wheloc proves that these records are posterior to the Norman Conquest, and only corruptions of the Saxon cyric-sceatta. Now in the Saxon language, this learned person proves that *sceat* signifies a *part* or *portion;* and that the term extends to other things besides, is evident from Sir H. Spelman, who tells us, from Domesday Book, that cocks and hens due to the church at Christmas are called "cyrisceat." The term *sceat* in this sense is applicable to the *primitiæ,* as well as to tithes, and we find it so applied. Junius gives teoþan-sceattas *decimæ,* and frum-sceattas *primitiæ.* And we find in the supplement to Du Cange, by D. P. Carpentier, an. 1766,—"Primitiæ adde: Stat. Synod. Eccl. Carcass. an. 1270, cap. xvi. ex Cod. reg. 1613. *Primitias earum rerum de quibus præstatur decima, dari volumus per trentenam juxta modum ecclesiæ Carcassonensis.* Primitiare, *primitias* solvere, præstare. Stat. Synod. *Eccl. Castr. an.* 1358, cap. 5, ex Cod. reg. 1592 A. *Sicut*

agricola tenetur decimare et primitiare quod sibi remanet, ita Dominus quidem de acervo non decimato arripit . . . . . nomine autem primitiarum seu pro primitiis, ad minus quadragressima pars de blado et vino, ecclesiis debet persolvi." And we further find from Du Cange:—"Primitiæ, Consilium Burdegalense, ann. 1255, cap. 20: *De primitiis vero statuimus, ut laici per censuram ecclesiasticam compellantur ad tricessimam vel quadrigessimam partem, usque ad quinquegessimam nomine primitiæ persolvendam.* Synodus Nemansensis, ann. 1284, cap. de Decimis: *De primitiis vero dicimus et juri esse consentaneum, reputamus et sic in Nemansensi diœcesi præcipimus observari, quod primitiæ ecclesiæ illi dentur de proventibus seu fructibus prædiorum decimæ persolvantur, cum non debeat una eademque ecclesia censeri; nomine autem primitiarum seu pro primitiis ad minus sexagesima pars de vino et blado ecclesiis debit solvi,* &c. In Append. ad Capitul. col. 1376: *Primitias de fructibus vestris et de laboratu debetis offerre ad altare, id est spicas novas, et uvas, et fava. Alias primitias ad domum presbyteri de omni fructu debetis portare, presbyter eas benedicat.*"

Again, Dean Comber, (Part i. chap. 5. p. 101,) speaking of the Greek canonica, which Selden affirms to have been the chief maintenance of the clergy, adds: "To which I reply that, from the testimony of Origen, Epiphanius, Saint Chrysostom, Isidore, and others, it is plain that anciently the *tenth* was determined even in the eastern church to be the least proportion of the christian oblations. . . . . . And yet it is very probable that there was an use of paying *tithes* also in the eastern church, for Pope Innocent III. affirms tithes were paid in his time at Constantinople (*Innocent, Decret.* lib. i. p. 85): and Humbertus (Humb. Cardinal, A.D. 1050) asserts that the Greek priests had both *tithes* and first-fruits in his days: and before him, Anastasius, a Greek abbot (A.D. 850), saith expressly, 'The laymen are wont to give tithes to the priests.' Theophylact speaks of a *tithing*, and of a tribute unjustly extorted out of it from the church. And in the same Epistle (*Ep.* 41, *ap. Bin. Patrum*) it appears that the Emperor's officers were obliged to give the

clergy an account, in writing, of laymen's estates, which, no doubt, was with respect to the dues which they were to require of them; and these dues are called *the first-fruits* due from the laity: and the very canonica mentioned in Selden were to be *required of the people according* to the proportion of their estates, and paid to the reverend priests, as the Golden Bull of Isaac Commenus decrees; which is really no other than tithes, though in the east it was called of *old, first-fruits*, and of *later* times the *Canonical due;* for it seems to be a fixed proportion, because it was (as tithe is) greater or less, according to the proportion of men's estates; and if, for want of an exact knowledge of laymen's estates, that church took what laymen gave in Balsamon's time, yet it is very likely that the due was the old proportion of a TENTH at least."

It is to this due that Selden compares the tithes in London. And as I have attempted to identify the church-shot of Ina with BOTH, I must therefore briefly recapitulate what I have before observed upon this canonica, in p. 26, from Dr. Tillesley, who says, "By the Aurea Bulla of Isaac Commenus, the ancient portion of the eastern church BEFORE is not to be considered—(he had asked if tithes might not be included under the name of *primitiæ*)—since, as Zonaras speaketh of him. . . . . 'after he became impious, he cut off many things consecrated to monasteries (which there were colleges of priests), and only leaving them bare necessaries, he confiscated the rest.'" Du Cange also says the canonica was paid according to the number of chimneys or hearths: and Chambers, in his Dictionary, says, "that every village containing thirty chimneys or fires, paid for its canonicum one piece of gold, two of silver, one sheep, six bushels of barley, six of wheat-flour, six measures of wine, and thirty hens." By which it appears that this levy was upon and according to the houses—not upon the estates; and that it answered both to the Mosaic first-fruits and to the church-shot or primitiæ of our Saxon monarchs.

The letter of Alcuin to Charlemagne, an. 797, speaks of a mode of tithing in France, by houses or families, and which may perhaps be understood of England also; but then it was "ut plena fiat PER SINGULAS DOMUS exactio illarum," and in order "substantiam nostram pleniter decimari."

The remark of Dean Comber upon the church-shot, in connection with the laws of Edmund, an. 940, might lead us to suppose that the *mode of tithing* was THEN changed in England; and that the church-shot, which was THEN paid separately, was altered from being a kind of tithe, and retained as the first-fruits of the threshing-floor. But although this interpretation of the church-shot greatly favours my own interpretation of its being the origin of the *tithes* in London, yet I do not think it capable of proof. Ethelred at Haba, an. 1012, ordained "Ut omnis homo super dilectionem Dei et omnium sanctorum det cyric-sceattum et rectam decimam suam, sicut in diebus antecessorum nostrorum fecit, quando melius fecit; hoc est, sicut aratrum peragrabit, decimam acram; et omnis consuetudo reddatur super amicitiam Dei ad Matrem Ecclesiam cui adjacet, et nemo auferat Deo quod ad Deum pertinet, et predecessores nostri concesserunt."—Cap. 4.

The mode of tithing here mentioned is, by the surrender of the produce of every *tenth ploughed acre*, and may possibly be based upon the grant of Ethelwulph, an. 854, who, it is said in the Saxon Chronicle (Dr. Ingram's Trans.), "registered (gebocud) a *tenth* of his land over all his kingdom, for the honour of God, and for his own everlasting salvation." But however this may be, Alfred, his son, in the treaty with Godrun, besides tithes, light-shot, and Rome-fee, mentions "Dei rectitudines aliquas;" and as his laws are by Mr. Soames said to be a digest of those of *Ina* and *Offa*, and enjoin the payment both of *tithes* and FIRST-FRUITS, may we not conclude that church-shot might be comprehended under the expression "Dei rectitudines aliquas," the penalty for the non-payment of which is stated as "Wita with the English, and Lahslite with the Danes;" and also *plough-alms*, which appears in the treaty of Edward the Elder. The Council of Haba, just quoted, in cap. 7, "de eleemosynis et rectitudinibus Ecclesiæ," states, "Et reddatur pecunia eleemosynæ hic ad festum S. Michaelis, si alicubi retro sit, per plenam Witam, et omnibus annis deinceps reddantur *Dei rectitudines* in his omnibus rebus quæ supradictæ sunt per amicitiam Dei et omnium sanctorum." (Reference seems here to be made to c. 4.)

It is very remarkable, also, that the laws of Henry Ist.

cap. 13, enjoin "Si quis *Dei rectitudines* per vim teneat, solvit Lahslite cum Dacis, plenam Witam cum Anglis."

Edgar, an. 967, after naming tithes, enjoins the payment of church-shot at Martinmass, "under the full penalty [Wita] which the Domboc teaches." Edmund, 940, makes the penalty excommunication, as for tithes. But Somner (Saxon Dictionary) observes, "the *Domboc* is referred to by Edward the Elder," (and I may add in the same terms as are here used): this reference, therefore, must be either to Alfred's or some earlier code of laws. Somner continues: the Domboc "was some book of statutes or decrees proper to the English Saxons; such, happily, as that wherein the laws of the former Saxon kings were contained: that chapter seeming to refer to the laws of king Ina, cap. 29. That Edgar's reference was to *this* Domboc also, seems to be confirmed by Canute's enjoining the identical forfeiture that Ina did, viz. paying the church-shot twelve-fold,(the eleven parts of which were to go to the bishop,) but with a greatly-increased fine to the king:" [the fine imposed by Ina was either 40 or 60 shillings; this was increased by Ethelred to 120, and by his immediate successor, Canute, to 220;] with all which Dean Comber's argument seems hardly consistent, I think.

His observation also of its being "mensura bladi *triturati*, du blè batu," and its mode of payment from houses, which is enjoined by Ina himself, appears moreover to me to be quite agreeable with the law of the second first-fruits in Levit. xxiii. ver. 15—17, which was to be paid "from their habitations," not from the fields, as the first-ripe fruits were. I, therefore, rather incline to believe that the church-shot of Ina (like the Greek canonica of Isaac Commenus) was the only legal provision for the clergy of that period; and that it did not undergo any subsequent alteration in consequence of the payment of tithes.

I have already alluded to the expression in the 23rd chapter of Leviticus, that the second first-fruits (to which I have compared the church-shot of Ina and the Greek canonica) were to be paid *from their habitations*, which may account for the mode of payment of those dues;—there are other circumstances of identity. In the notes to Henry and Scott's

Bible, upon Levit. xxiiii. ver. 15—17, it is said, "By the time of the feast of weeks, or of the Pentecost, the barley, which was in *ear* by the feast of the Passover, would be gathered in, and the wheat ripe and in part reaped. Of the wheat they were to make another acknowledgment *out of their habitations*, as the first-fruits were out of the field. It was to be of fine flour leavened, for food—not *sacrifice*." To this I may add, that this *due* in verse 20, is said to be "holy to the Lord, for the priest." Dean Comber also, in p. 72, Part I. says that the Council of Ancyra, anno 315, can. 15, uses the expression το κυριακον, when speaking of first-fruits; and "forbids the alienation thereof." This is in strict accordance with the Mosaic primitiæ, as above; and the term church (*cyric*) in the word church-shot, appears to be derived from the same word, and either to relate to the church, *i. e.* the fabric, or to the Lord; and in the former sense, the word would denote the church's (κυριακον, scil. οικημα, or κυριακη, scil. οικος—Dominica domus) —in the latter, literally, the *Lord's portion*. I trust, therefore, it may appear from the foregoing remarks, that my own conclusion of its being a legislative provision by a regular assessment upon houses, for those first-fruits which among the Jews were paid out of their habitations, and which Selden says was in the proportion either of a fortieth, fiftieth, or sixtieth part; and the consequent probability of its being the *legal* origin of the tithes, that is, of the offerings out of houses, in London, is substantiated: and Selden himself seems to refer those payments to the canonica or primitiæ of the Greek church.

I have been informed that the vicar of Easingwold, in Yorkshire, is entitled to the sum of sixpence *for the hen*, from each house in the parish. Was not this from the church-shot?

The identification of the church-shot with the Greek canonica, and its derivation through the British church (of the eastern origin of which latter there is abundant testimony), is corroborated by the Saxon term *church* itself in this word, upon which Spelman has the following observations in his Glossary under *Dominicum*:—"Vox eccl. pro Cœna Domini. Cyprian, serm. 1. *De Eleemosyna*. Pro templo, ecclesia, basilica, et loco in quem ad sacros conventus celebrandos fideles

soliti sunt convenire. Græc. κυριακον, occurrit in Concil. Laodic. circ. an. 366, cap. 28, interpr. 2. . . . . And in explanation of the reason for this use of the word *Dominicum*, he adds, from B. Rhenonus, "Apud primos Christianos Domini vocabulum paulo frequentius fuisse quam Christi (juxta morem Apostolicum, et modum historiæ Evangelicæ): perinde etiam ipsa loca in quibus coibant propter Dominum appellasse eos Dominica: Unde (inquit ille) Germani etiamnum episcopalia templa (quæ certe primaria sunt et reliquas antiquioria) Dom vocant. . . . . Exstat adhuc in Tribonis, inter Elcebum pagum qui Sletstadio originem et nomen dedit, et Argentorum prope Molleshemium Sacellum quoddam vetustissimum etiam Gentilium Romanorum monumentis spectabile, quod vernacula simplicitas Domphieter appellat, *i. e.* Dominicum Petri; hæc ille. Sane ut isti Dom pro templo, a Latinis Dominicum et Dominus: ita Germani alii, Saxones, Angli, Scoti, Batavi, Kyrik, et per contractionem Kyrk, a Græc. κυριακον et κυριος deduxere; nostratibus hodie duplici aspiratione vocabulum proferentibus, Chyrch; Germani simplici Kyrch; Scoti juxta primitivum Kyrk. Quod innuere videtur, hos prima religionis semina a Græcis auspicatos: illos vero a Romanis."

Feuardentius has these remarks upon the primitiæ, to the place in Irenæus referred to by Grabe (p. 60), speaking of those offerings among the Hebrews:—"Primo autem offerebant, gratias agentes Deo authori et largitori omnium bonorum, eique ut summo omnium imperatori tributo persoluto, se famulitium perpetuum præstaturos recipiebant. Secundo, sacerdotes et Levitæ quibus nulla terræ portio certa fuerat, quique continuo sacris operabantur, his oblationibus honeste alebantur, atque ob eam rem Deus eorum agris ubertatem pollicebatur. Tertio, viduarum, pupillorum, peregrinorum, et pauperum necessitatibus consulebatur. Postremo, hoc genere oblationum, ut reliquis sacrificiis et ceremoniis legalibus venturam Messiam; et per ejusdem perfectam oblationem peccatorum expiationem, perfectamque cum Deo reconciliationem se credere et expectare significabant.

"Christiani autem cum legis ceremoniis per Christum soluti sint, postremaque ratio ad eas spectet, nunquam ea

conditione primitias offerre licet. Quia verò aliæ rationes ad moralia pertinent, quæ Christus non abrogavit, sed explicavit et confirmavit, indicaverunt Apostoli, horumque successores, Christianos adhuc decimarum et oblationum offerendi munere teneri. Id docet B. Clemens Romanus his verbis: 'Quamquam Dominus liberavit vos à servituti adjutorum vinculorum, non amplius sinens vos sacrificare animalia bruta pro peccatis: non tamen vos oblationibus liberavit, quas sacerdotibus debetis; et beneficiis, erga eos, qui egent. Ait enim Dominus in Evangelio: Nisi abundaverit justitia vestra, etc. Ita ergo abundabit, si de sacerdotibus, orphanis, viduis, majorem curam suscipietis.'" Apost. Constit. lib. ii. c. 35.

Grant of Ethelwulph.

As I have had occasion to mention the grant of Ethelwulph, I beg here to observe, as Dr. Lee states in his Letters to Mr. Joseph Storrs Fry upon this subject, that nothing can be more authentic. It is mentioned in the Saxon Chronicle, sub an. 854, and by all the succeeding historians. The interpretations of it are, however, very different.

Asser, the friend and biographer of Alfred, a contemporary authority, says, "Venerabilis rex decimam totius regni sui partem ab omni regali servitio et tributo liberavit," which appears to be the equivalent Latin phrase for the Saxon g e b o c u d e; many instances of the use of which word, both for creating bocland, and as a confirmation of a gift of land in perpetuity by the king as supreme lord, are given by Somner in his Treatise on Gavelkind, p. 113, who there states, "King Ethelred's privilege (as called), confirming to the cathedral of Canterbury (amongst other things) their whole possessions, is by one of the subscribents called c y n i n g s b o c u n g e.

The grant of Ethelwulph, in this view, may be applicable to tithes;—not that there were no laws for tithes before, but that this first extended them to the whole kingdom, and gave the clergy a right in the land: upon which right the laws of succeeding kings seem to have been founded, which ordered the surrender of the produce of every tenth ploughed acre;

thus including improvements, as if the land belonged to the clergy; and the expression "decima acra sicut aratrum peragrabit" is applied to this mode of tithing, as Selden observes, in the laws of Edgar, Ethelred, and Canute. And, in explanation of the word gebocude, I may add, that Somner, in p. 112, speaking of bocland, says, "that it took its name from the lands *booking*, or entering, (with the limits of it) in a codicil (as then called), a little book, or (as we since call it) a charter; which, if the land were given to a layman, was, in the way of seizen, delivered to the party that was to have the land, (hence haply that ceremony we retain of delivering a conveyance as the party's act and deed); or (if to a monastery) laid and left most commonly upon the altar: 'Ego autem licentia et consensu illius testimonioque episcoporum et optimatum suorum, omnes terras meas, et libros terrarum propria manu mea posui super altare Christi in Dorobernia,' etc., as it is in the close of a memorial of the gift of Monkton, and other manors, to the church of Canterbury, in the year 961, by Edive or Edith."

The act of Ethelwulph, by which he *gebocude* the tenths of his lands, is said to have been laid upon the altar.

Ethelwerd, almost a contemporary, is more obscure: he says, "In eodem anno decimavit Athulf rex de omni possessione sua in partem Domini, et in universo regimine sui principatûs sic constituit."

Ethelred says of Ethelwulph, "Eleemosynis sane sic operam dabat, ut totam terram suam pro Christo decimaret, et partem decimam per ecclesias monasteriaque divideret."

Brompton also, as remarked by Mr. Soames (to whose work upon the Anglo-Saxon Church, pp. 130, 131, I am indebted for these particulars) "represents Ethelwulph's donation as consisting in land, not in tithes of produce; but his words might be so taken as to give the grant an appearance strictly eleemosynary: 'Iste rex Ethelwulphus contulit Deo et ecclesiæ sanctæ decimam hidam terræ totius Westsaxiæ, ab omnibus servitiis secularibus liberam et quietam ad pascendum et vestiendum pauperes, debiles, et infirmos.' The Textus Roffens. and the Charters of the bishops of Rochester contain a charter of Ethelwulph (or what purports to be such) to Diuma, then

Bishop of Rochester: the words are, as cited by Dr. Tillesley, 'Ego Ethelwulphus, rex occidentalium Saxonum necnon et Cantuariorum, *pro decimatione agrorum* quam Deo donante cæteris ministris meis facere decrevi. Tibi Diumæ ministro meo dabo unam villam, quæ nos Saxonice an Haga dicimus in meridie Castelli Hrobi (Rochester) et decem jugera a meridiana plaga villulæ illius adjacentia: quod hoc ipsum tibi adhibendum et possidendum concedendo mandamus, ut post dies tuos cuicunque hæredi tibi placuerit derelinquendam cum plena libertate habeas potestatem, anno 855. Indict. 3. hoc est divina gratia largienti quando ultra mare Romam perexi.' So that this grant was either for, or in lieu of, the tithes which had been given to others."

In the Saxon Chronicle by Wheloc, as I have been informed by the same friend to whom I have had occasion so often to express my obligations, the grant is mentioned (A. D. 854) in these words: "Eodemque anno Ethelwulfus Rex, decimam *terræ suæ et regni* quoque totius partem libro inscribens in laudem Dei suæque etiam saluti æternæ consulens dicavit."

Some authors think that it was a tenth of the domains only; and Mr. Soames says, "this is distinctly stated by an anonymous annalist of the church of Winchester, printed in the Monasticon (p. 32), "Rex Ethulfus, a Roma reversus, totam terram de dominio suo decimavit, et decimam quamque hidam contulit conventualibus ecclesiis, per regionem."

Perhaps the explanation of these various interpretations, but which I do not pretend to reconcile, may be found in the fact of Ethelwulph having made two grants, as related by Spelman, Concil. I. p. 352, (though I do not remember to have seen this noticed lately in the remarks upon the grant of Ethelwulph,) under "Diploma aliud seu Epistola Ethelwulphi regis occidentalium Saxonum, an. 857; in qua de singulis decem hidis seu mansionibus hæreditatis suæ, pauperem unum alendum præcepit." Spelman continues, "Florentius Wigornensis de illis agens quæ ab Æthelwulfo rege occidentalium Saxonum acta sunt anno D. 855, primo memorat prædictæ regni sui decimationis;" using the very words of Asser, with the addition to those quoted above, of "Uni et Trino Deo immolavit." And he proceeds to state, speaking of his acts upon his

return from Rome, among other provisions in his will, "Pro utilitate namque animæ suæ, quam a primævo juventutis suæ flore in omnibus procurare studiit, per omnem hæreditariam terram suam semper in decem manentibus unum pauperem aut indiginam aut peregrinum cibo, potu, vestimento, successoribus suis usque ad ultimum diem judicii post se pascere præcepit; ita tamen si illa terra hominibus et pecoribus habitaretur et deserta non esset."

Ethelstan, in the Council of Grateley, an. 928, at the instance of the bishops, enjoins the same upon his prepositi or sheriffs, adding the following injunction, "Ex binis singulis villis meis quoque dantor mense, amphora farinæ una, porci perna una, aut quatuor denariis æstimandus aries, atque in singulos annos operimenta corporis."

Sir H. Ellis, in the Introduction to Domesday, under "Eleemosyna Regis," says, "Madox, in his History of the Exchequer, has a section upon the Eleemosyna Regis: he says, 'Now we are upon the subject of the royal revenue, we must do some right to the piety of our ancestors, Upon perusal of the ancient revenue rolls, it appears that, in those times, many branches of the king's fixed revenue were charged with alms: out of this fixed or settled revenue there was generally some portion consecrated to pious uses. This alms was called the 'Eleemosyna Constituta,' the settled alms, to which may be added the decimæ constitutæ." Spelman adds, in his Notes upon the "Diploma" of Ethelwulph just quoted:—"Iornalensis codex MS. videtur duplicem hanc Æthelwulphi regis decimationem, de una tantum intelligere, vel rem malè enarrare. Primam enim illam in qua decima hyda totius regni, Ecclesiæ est largita indefinitè: ille ad PASCENDUM ET VESTIENDUM PAUPERES, DEBILES, ET INFIRMOS DATAM asserit specialiter, quod sine dubio alterius temporis donum fuit, regiæque pietatis opus alterum, ut palàm est è Wigornensis, Malmesburii, et Westmonasteriensis testimonio: id nimirum factum an. gratiæ 855, cum Romam proficiscitur Æthelwulphus, hoc biennium postea, id est, anno 857, cum jam esset moriturus. Iornalensem habe, (in vita ejus) sic de ejus eleemosynis prædicantem. 'SCRIBITUR NAMQUE (inquit) QUOD ISTE REX ETHELWULFUS DECIMAM HYDAM TERRÆ TOTIUS WESTSAXIÆ DEO ET ECCLESIÆ CONTU-

LIT AB OMNIBUS SERVITIIS SECULARIBUS [LIBERAM] ET QUIETAM AD PASCENDUM ET VESTIENDUM PAUPERES, DEBILES, ET INFIRMOS.' "

It appears, then, that the clue to much of the obscurity in the charters, &c. which record the grant of Ethelwulph, may be resolved into the confounding of his two-fold donation; and further, it is probable that the monastic struggle for ascendancy in England had something to do with this confusion. The Saxon Chronicle, Asser, Ethelwerd, and Florence of Worcester, place Ethelwulph's grant in 854 or 855, and *before* he went to Rome: Brompton and Ingulph in the following charter, upon his return from Rome; and the latter thus speaks of it:—"Omnium prælatorum ac principum suorum, qui sub ipso variis provinciis totius Angliæ præerunt gratuito consensu tunc primò cum decimis omnium terrarum, ac bonorum aliorum sive catallorum universam dotaverat Ecclesiam Anglicanam per suum regium chyrographum confectum inde in hunc modum . . . . . [after relating the occasion, viz. the miseries of Danish invasion.] Quamobrem ego Ethelwulphus rex Westsaxonum, cum consilio Episcoporum ac principum meorum consilium salubre ac uniforme remedium affirmantes, consensimus, ut aliquam portionem terrarum hereditariam *antea possidentibus* omnibus gradibus, *sive famulis et famulabus Dei, Deo servientibus* [monks and nuns], *sive laicis miseris* [where reference is plainly made to the second grant], *semper* decimam mansionem, [hydam seu familiam Selden, the '*decem* manentibus' of the second grant], UBI MINIMUM SIT, tum decimam partem omnium bonorum in libertatem perpetuam donari sanctæ Ecclesiæ dijudicavi, etc."

And the Abingdon copy of this charter, which has the title "Quomodo Adulfus Rex dedit decimam partem regni sui Ecclesiis," relates, "Perfeci, ut decimam partem terrarum per regnum nostrum, non solum Ecclesiis darem, verum etiam *et ministris* nostris in eadem constitutis, in perpetuam libertatem habere concessimus, etc."

Malmesbury (Gest. Reg. lib. ii. cap. 2), in his version of the grant of Ethelwulph, says, "decimam omnium hydarum intra regnum suum CHRISTI FAMULIS concessit." To which Tillesley adds, from the same writer, De gestis Pontificum, lib. ii. p. 242:

"Tum vero palam erat, quod eum *spiritualis philosophia* docuisset, dum magis *famulorum Dei* quam suis utilitatibus prospiciens omne regnum suum Deo decimaret."

There appears to have been some design in all this; and none seems to me so probable as that which I have suggested.

THE END.

METCALFE AND PALMER, PRINTERS, CAMBRIDGE.

ERRATA.

Page 6, line 6, *for* est et *read* esset.

Page 8, line 27, *for* nec alia ad eum, *read* nec alia quæ ad eum; and in the note at the foot of this page, *for* and see vol. i., *read* and see Wilkins' Conc., vol. i.

Page 27, line 28, *for* αναταιομενων *read* αναταττομενων.

Page 42, line 29, *for* king of Kent, *read* king of Mercia.

Appendix, page 55, line 2 from the bottom, *read* but they are also distinguished from tithes in a Constitution ascribed, &c.

——— page 59, line 30, *read* id ipsum Verbum.—Allusion is here probably made to Matt. v. 23 and 24, as applied by Irenæus in the beginning of this chapter, who says, "By a gift to the king, his honour and our affection is shewn; therefore our Lord, willing us to offer with all simplicity and innocency, preached, saying. 'When thou bringest thy gift to the altar,'" &c.—See also *Sparrow's Rationale*, p. 201, *Oxford Ed.*

——— page 75, line 30, and page 76, line 20, *read* Archaionomia.

——— page 80, line 14, *insert* (") after cap. 29, *dele* (") line 18.

OBSERVATIONS

IN

REPLY TO A PAMPHLET

BY THE

REV. RICHARD JONES,

ONE OF THE TITHE COMMISSIONERS FOR ENGLAND AND WALES,

ON THE

ASSESSMENT OF TITHES

TO THE

POOR'S RATE.

BY

WILLIAM BLAKE, Esq., F.R.S.

LONDON:

JOHN MURRAY, ALBEMARLE STREET.

MDCCCXXXIX.

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OBSERVATIONS, &c.

A VERY ingenious pamphlet was published towards the end of the last session of parliament by the Rev. R. Jones, one of the Tithe Commissioners, entitled "Remarks on the manner in which Tithe should be assessed to the Poor's-rate," with a protest against the bill which Mr. Shaw Lefevre was at that time introducing into parliament. The bill was subsequently withdrawn, and there can be little doubt that Mr. Jones's pamphlet, which no one can read without acknowledging the talents and ability of the author, contributed in a considerable degree to that result. That bill no longer engages the public attention, but the investigation of the principles which should regulate the assessment of tithe to the poor's-rate, possesses perhaps more interest than ever. In fact, the two important and novel measures of Tithe Commutation and Parochial Assessment can scarcely be carried on to completion, until those principles of rating shall be correctly determined.

Of the whole of this subject Mr. Jones has, as it appears to me, taken a most erroneous view, and his argument is so mixed up with misstatements as to facts, unintentional I am quite sure

on his part, yet still so concealed from the view of a confiding reader, that I cannot think it unseasonable to point them out, and prevent the public from being misled by one deriving so much weight and authority both from his talents and high official station.

The discussion on this subject has mainly arisen in consequence of a proviso in the first clause of the parochial assessment act, introduced by the Archbishop of Canterbury, at the suggestion of Mr. Jones, under which it was supposed the clergy might be enabled to avail themselves of the decision of the Court of King's Bench in the case of the King and Joddrell, (1 B. and Ad. 403), a case that has unfortunately, within these few months, become familiar to all who are in any way connected with land or tithes. Nevertheless, as many persons may not be aware of the nature and details of that case, I will *in limine* state shortly—that, in the year 1830, the Rev. P. Joddrell, Rector of the Parish of Yelling, in Huntingdonshire, appealed to the Court of King's Bench, in order to obtain a deduction from the sum at which he was assessed to the poor's-rate. It appeared, that the tithes of the parish had been extinguished under an enclosure act, and that a corn-rent in lieu thereof was payable to the rector. Upon this corn-rent he had been rated,—and his appeal against the rate was founded, not on any

imputed error in the amount at which his corn-rent was assessed, as compared with its actual value, but simply on the ground, that the farmers in his parish had been rated on their rents alone, whereas he contended, that they ought to have been rated both on their rents and on their profits, or rather on that portion of their profits which remains beyond the interest of capital, and compensation for the farmer's trouble, labour, and superintendence; and, that as those profits had been omitted from the rate, he the tithe-owner was entitled to a proportionate deduction.

The judgment of the court was, "that the farmer's share of profit ought to have been rated, or, which is the same thing, that the tithe-owner should have been rated proportionably less."

Mr. Jones assumes throughout his argument, or at least would lead his readers to believe, that this decision made no difference in the law of rating as it was previously understood, and that the right of the tithe-owner to some allowance, in consequence of farmers' profits not being rated, had been recognised in former cases. Now I challenge Mr. Jones to point out a single case, excepting that of the King and Joddrell, where this doctrine has been in the remotest degree recognised, or, what is more, has even been alluded to. But I may go further, and assert, without fear of contradiction, not only that the principle

has never been admitted, but that no usage or practice corresponding with such a principle has ever existed, and that, if it is now to be acknowledged as the law of the land, it will entail a complete revolution in the whole system of parochial assessments.

Cases have occurred no doubt, where clergymen have not been rated to the full value of their tithes, because it often happened that the whole ratable property of the parish was estimated at one-third, or two-thirds of the real value—and sometimes, in temporary compositions for tithes, the rate-payers have undertaken to pay the rates upon the tithes, and exonerate the clergyman altogether: but this is widely different from making an allowance to clergymen, on account of farmers not being rated upon their profits.

Now it is clear that no profits can accrue to the farmer, without the due application of capital to the cultivation of his land, and I contend that his profits are similar in their nature to those of any other capitalist, and ought to be dealt with on the same principles. What then has been the practice, and the decision, of the courts, on the rating of the profits of stock or capital generally, and to what extent have these principles been recognised or confirmed by our courts of judicature, when applied to the specific profits in the business of farming?

It will be my object to show, as a matter of fact, that the usage, ever since the 43rd of Elizabeth, has been to abstain from rating the profits of stock or capital, whether employed in trade or in agriculture; that this usage has been sanctioned by the approval of the judges in various instances; and that the profits of farming stock in particular, have been, from a very early period down to the time of the King and Joddrell, considered to be exempt from liability to parochial rates.

It has been doubted by high legal authority, whether it was ever intended, by the 43rd of Elizabeth, that personal property should be rated. In the case of the King *v.* Canterbury (4 Burrow, 2293), in 1769, allusion was made to the case of Sir Anthony Earby (reported by Bulstrode in the time of Charles I.), where the question of rating personal property appears to have been brought before the court, and Mr. Justice Aston, in delivering his judgment, says, "It was odd that ever since the case in Bulstrode, which was above 140 years ago (*i. e.* in A.D. 1629), the rule, said to be then settled, should never have been carried into execution, nor any determination made in pursuance of it. He thought there was great difficulty and guess-work in taxing personal property and stock-in-trade, and that it was scarcely practicable to ascertain

the true quantum of either. *No case decides that it is ratable, and probably the statute of 43rd Elizabeth did not intend that it should be so.*" Mr. Justice Willes, in the same case, declared, "that he should give no obiter opinion about personal estate or stock-in-trade being liable to be rated, yet he intimated, that *long contrary usage* ought to go a great way towards overturning any old dictum, and that, if they were liable, they ought at least to be visible, liquidated, and ascertained, not loose, fluctuating, and uncertain."

There is one case so far back as 1706, in the time of Queen Anne—the Queen *v.* Barking (2nd Lord Raymond, 1280)—in which the profits of farming stock were specifically mentioned as the possible subject of rate. In that case, the question, whether a farmer is chargeable to the poor's-rate for his stock-in-trade, was submitted, by consent, for the opinion of the judges of the King's Bench, whereupon the following rule of court was made, and drawn up in Latin: "Upon mature deliberation, it is considered by the court, that a farmer is *not* taxable to the poor-rate for his stock, and that a tradesman *is* taxable for his stock-in-trade."

It will be a curious circumstance, if, in these modern days, the rule is to be reversed, and that, profits of trade being now universally exempted

from poor's-rates, farmers' profits alone are to form the exception.

Lord Mansfield's opinion on this point, in 1775 (King *v.* Ringwood, Cowper, 326), is very strong. He says, "I believe neither here nor in any other part of the kingdom is personal property taxed to the poor. * * * I think the justices would not have done very wrong if they had acquiesced in the *practice which has obtained ever since the statute of the 43rd Elizabeth*, of not rating this species of property. * * * The justices at sessions should have amended the rate, if they thought this property ratable, and then, on attempting to do so, they would have discovered the wisdom of conforming to the practice of not rating it, * * * especially when it appears that mankind has, as it were, with one universal consent, refrained from rating it: the difficulties attending it are too great, and so the justices would have found them. As to the authorities, which have been cited, they are very loose indeed; and even if they were less so, one would not pay them much deference, especially as they differ, and the rules they lay down have not been carried into execution for upwards of 100 years. * * * As to the case in Lord Raymond, the only question submitted to the court was, whether the stock of a farmer was ratable to the poor, and they held it was not. But, according to the report, they go

on and say, the stock of an artificer is ratable; they had no case before them as to that point, therefore the judgment upon that question is extra-judicial." Mr. Justice Aston, in the same case, observes, "There has been no decision that personal property is ratable, and all the opinions on the subject are only dicta of judges. Lord Hale says the usage has been against rating personal property, and that the inconveniences attending it would be very great. * * * If the justices had amended the rate, as they ought to have done, they would, in the attempt to make a better rate, have found the difficulty of rating personal property."

I hesitate at quoting a passage in confirmation of these opinions, from Mr. Nolan's book on the poor-laws; for although I have turned to the twenty pages of that work, which Mr. Jones so strongly recommends his readers to weigh and consider, yet I must confess, that, after considering them, they appear to me to contain more confusion and inconsistency than I have ever met with in the same number of pages. Nevertheless, as his opinion seems to have great weight with Mr. Jones, I shall insert the following passage, as one of the more favourable specimens of Mr. Nolan's reasoning. In vol. I., page 228, he observes: "Personal property is not usually rated. It is difficult to ascertain its accurate amount,

unless by using those arbitrary means which are neither provided by the poor-laws, nor permitted by the spirit of our constitution. Sometimes a fair disclosure of effects is supposed to injure a commercial man, and he would rather choose to submit to the imposition of an exorbitant assessment than seek redress at the hazard of his credit. These and other reasons have induced most parishes to refrain, as it were by common impulse, from assessing personal property, since the 43d Elizabeth. Its liability is no longer questionable, but the apprehension of mischievous consequences has usually prevented its being rated, even in manufacturing countries, where the omission presses upon the landed proprietor with considerable hardship."

There are many other more recent cases confirming those quoted above, to which perhaps I may have occasion to refer hereafter; but these are sufficient to establish the general position, that, if profits ever were intended to be rated by the 43d Elizabeth, the judges have seen both the impolicy and the impracticability of so doing, and have accordingly acquiesced in the exemption of personal property, except in some very rare instances, where there appears to have been a peculiar statute, or local usage, to rate stock-in-trade. Whenever such a rule has been acted upon, it seems to have been effected by a sort of

random guess-work, as may be seen in the case of the King *v.* Hardy (Cowper, 579). It appeared, that in the parish of St. Clement, in the city of Norwich, there was a local act, which specifically authorised the rating of all persons having and using stocks and personal estates; and the practice, ever since the passing of the act, had been, to rate stock and personal property, including money out at interest, at one-fortieth of the estimated amount, and then to calculate the annual income at four per cent. on that one-fortieth. These estimates were varied from time to time, according to the supposed alterations in the circumstances of each individual inhabitant. This may serve as an instance of the extraordinary expedients that were of necessity resorted to, when an attempt was made to rate the profits of stock.

Nevertheless, the legal question, whether personal property is or is not ratable, has been the subject of conflicting decisions, as may be seen in the King *v.* Darlington (6 T. R. 468), and in the King *v.* Ambleside, where Lord Ellenborough held, that stock-in-trade was ratable; but one cannot read the cases without observing, how reluctantly the decisions were given on this side of the question, and how clearly the judges saw the difficulties with which the practice was encumbered. The final result is, that, whether this or that judge has rightly interpreted the

law, the practice of rating personal property can scarcely be said to have been adopted, and has long been universally abandoned.

If then it be settled by long-established usage, that personal property or stock-in-trade is not to be rated, the question naturally recurs, why is the personal property or stock-in-trade of a farmer to be put upon a different footing? Either let all be rated or none. The unfairness of rating the farmer alone is so manifest, that one hardly knows how to deal with it. I have heard it argued, that farmers' profits are to be considered as arising, not from capital, but from the land itself; that therefore they stand upon a different footing from the profits of other trades, and in fact form a part of the annual value of the land. I cannot forbear expressing my surprise that a doctrine so exceedingly unsound should ever have been put forward to justify the decision in Joddrell's case. Mr. Jones indeed is too well informed upon subjects of this nature to venture upon such an untenable position, and he has therefore tacitly abandoned it. But as some impression of this kind appears to have influenced the court in deciding upon the case, it becomes necessary to examine it, and to show the true nature and origin of farmers' profits.

Before a farmer embarks his property in the cultivation of a farm, his first inquiries are

directed to the productive qualities of the soil; next, what he is to pay for the use of that soil, in the form of rent; then, the further outgoings of tithe, rates, and taxes—the sums he will have to pay for the wages of the labourers, and the feed of his working horses—the live-stock he will have to procure and keep for the purpose of obtaining manure—the outlay for carts, ploughs, and all implements of husbandry, and the cost of keeping them in repair. It is not until after all these calculations are made, that he can ascertain the amount of capital he must possess, to undertake the farm with any prospect of success. The aggregate will be from five to ten pounds per acre, according to the character of the soil, some lands requiring a much more expensive cultivation, and a larger outlay of capital, than others. He knows, whatever be the amount of capital required, that the whole of it will be sunk in the course of the first year, before he obtains any return whatever. If he feels a strong conviction, that the yearly produce he can bring to market, will repay the whole of this outlay, together with such a return of profit as he might reasonably expect, compared with the return to be obtained in any other trade, he may venture to risk his capital in the undertaking. It is a risk, depending upon seasons and elements over which he has no control, and he must allow for an additional profit, to insure him against that

risk. Unless the produce of the farm will do this, he would be rash to undertake it. If there be any profit beyond this, the landlord has fixed too low a rent. *But, the rent being fairly adjusted, the profit will be in proportion to the requisite capital, and no more.*

In confirmation of what is here laid down, I shall quote an authority to which Mr. Jones can hardly object. In a work which he published some years ago, on Rent, he says (page 13), "In the case of these last (farmers' rents), the amount of wages is first determined, by causes foreign to the contract between the proprietor and the tenant, and then the amount of rent is strictly limited by the amount of the profits on the capital used, which capital, if those profits are not realized, may be withdrawn to another employment. The clauses which determine the ordinary rate of those profits are also independent of the contract between the landlord and the tenant." And again, at page 192, "Let us suppose a country, possessing gradations of soil, increasing in fertility from A to Z, of which A returns to 100*l.*,—110*l.*, and so on progressively to Z. * * * Let A have been formerly cultivated with 100*l*, yielding annually 110*l.*, 10*l.* *being the ordinary profits on stock*; and B, with 100*l.*, yielding 115*l.*; and C, with 100*l*, yielding 120*l.*; and so on to Z. As all above 110*l.* would be *surplus profits*, or rent, the

rent of B would be 5*l.*, and that of C 10*l.*, &c. &c."

Here it is distinctly shown by Mr. Jones, that, before any rent can arise, the ordinary profits of the farmer's capital must be realized. It is one of the necessary outgoings to be charged against the produce, in the same way as the labour-rates and taxes are charged; for it is not until all these are satisfied that rent can fairly begin; and, when it does begin, it absorbs all the surplus profit that can be made on the land, leaving nothing whatever to the farmer beyond that to which his capital entitles him.

Casuistry has no limit if this profit is to be called a part of the value of the land. The value of the land is measured by the rent, and the rent alone. Does any one, in buying land, estimate the number of years' purchase on any other criterion than the rent? Does he ever include the farmer's profits as any part of the value of the land? Does not the farmer consider the rent as the price he pays for the use of the land? Does it not measure the value of his occupation? Every one knows that, where the rent is fairly fixed, the farmer has no *beneficial* interest in the land. His interest, under his lease, has no exchangeable value. No one will give him anything for it; and why? Because, whoever buys the lease, must bring the same amount of capital,

and risk it in the undertaking; and after all, he will obtain no more than the ordinary profits of his stock; that is to say, the profit, that his capital ought to bring, as compared with what might be made in any other trade.

The produce, constituting the profits of the farmer, is no more a part of the value of the land, than the produce which pays the wages of labourers; or that which pays the profits of the wheel-wright, collar-maker, and blacksmith, for keeping his implements in repair. These are all profits derived out of the cultivation; yet, who ever considered them as profits to be rated to the poor? Nay, it is well known that more or less profit is made out of the same land, occupied at the same rent, according to the amount of capital employed upon it. One man, without a sufficient capital, will become a bankrupt, on a farm which his successor will cultivate and thrive upon, for no other reason than that he has the requisite amount of capital, showing that it is the capital, and not the land, which is the real source of the farmer's profit. If the farmer embarked the same capital in hiring a cotton-mill and its machinery, and by an outlay in the purchase of cotton and payment of the cotton-spinners, produced a finished article which, by its sale, returned him the same profits, he would not be rated on those profits. Why then is he to be rated on the profits of the

same capital employed on land? The land and the mill are each the means and the machinery, by which the capital is brought into operation. They both come within the description of ratable objects, in the same clause of the statute of the 43rd Elizabeth; both are real property—"occupiers of houses and lands" are the terms of the statute. Yet, in the case of the mill, the rent alone would be rated; and so should it be with the land, and so it has been, until the decision in the case of the King and Joddrell reversed the prior decisions, and introduced an entirely novel principle of rating land, as we shall presently see.

Again, land is made to return a profit in various modes, sometimes by cultivation of grain, sometimes by a return of another description. The composition usually called Parker's Cement, employed of late years for covering houses in place of stucco, is made from a certain material that is found only in peculiar soils. An additional rent is paid for the land from which it is obtained. The tenant, bringing the necessary capital and knowledge for carrying on this manufacture, derives a profit from that capital beyond the rent—yet he would be rated solely on the rent. Upon certain clay-lands at Whitby, in Yorkshire, and elsewhere, large quantities of alum are prepared, by certain chemical processes applied to the materials existing in the soil. When land is

farmed in this way, it requires both chemical skill, and capital, and the profit must be sufficient to afford an adequate return for both, and much beyond the profits obtained in the ordinary mode of occupying land. Nevertheless, the tenant would be rated on his rent alone.

One cannot have a more common or striking instance than that of a brick-field, where the occupier, instead of employing a few labourers to cultivate the land for grain, employs a large number of brick-makers to convert the soil into bricks. The occupier of the grain-farm pays perhaps 200*l.* rent for a farm of 200 acres, and obtains from it a gross produce of the value of about 5*l.* per acre, or 1000*l.* The occupier of the brick-field pays, perhaps, the same rent of 200*l.* for twenty acres, and produces 20,000,000 of bricks, worth not less than 30,000*l.* Of course this vast amount of produce is obtained, by the application of additional capital to the land, and the capitalist expects to be remunerated by a profit proportioned to his outlay. Both these occupiers would, according to the present practice, be rated on their rent—such has always been the usage—yet, in the one case, the profits are probably about equal to the rent; in the other, they may be fifteen or twenty times the rent. Now, if the principle recognised in the King *v.* Joddrell is to be introduced, and deductions to be made from the assessment on

tithes, proportional to occupiers' profits, how are you to deal with these two modes of occupying lands? and what stronger proof can you have, that the occupiers' profits are no part of the value of the land, but are a value arising from capital, and bearing a definite ratio to its amount? These are not imaginary statements. One brick-field, in the neighbourhood of Islington, yields annually, from 30,000,000 to 40,000,000 of bricks, which, at thirty shillings per thousand, gives 60,000*l.* of gross produce; and another field close adjoining, yields from 20,000,000 to 30,000,000. Further illustrations might be adduced from the culture of hops, teazle, dyeing and medical drugs, all yielding different profits according to the capital employed, but bearing no given ratio to the value of the land, as measured by the rent.

In all these cases, as well as in the more familiar case of farming, the land does no more, than afford the tenant the opportunity of employing his capital, with a view of obtaining a profitable return. It is the machinery he makes use of, whether in the form of fields exposed to the sun and air, and producing food, or covered by mills and manufactories, producing clothing or other articles for the use of man. The tenant obtains no more profit than what he has a right to expect from the amount of capital employed—all profit beyond that is paid as the compensation for the use of the land,

constituting rent, and, thus measuring, both the value of the landlord's property, and the value of the tenant's occupation.

Thus we have come to the conclusion, on a general view of the principles of the case, that farmers' profits are precisely on a footing with the profits of stock in any other business—that we cannot, with justice, rate one species of stock, without rating all, and that, if we were disposed to rate the profits of stock, the attempt would be utterly impracticable. Let us now proceed to examine how far the decisions of our courts of law have been in conformity with the principles which we have endeavoured to establish.

The first case I shall mention is the King *v.* Skingle, in 1798 (7. T. R. 549), in which certain farmers were rated on the rents reserved in their leases, which, at the commencement of the term, when the farms were let, were the fair annual value of the land. The rate was appealed against, on the ground that, since the letting, the farms had increased in value and were worth a higher rent. The Court of King's Bench would not hear the counsel in support of the rate, considering it clear, that the farms ought to be rated at their full annual value, thereby implying that the rent was the measure of ratable value, so long as it was a full and fair rent, although it ceased to be

so, when the value had increased so as to command a higher rent.

In the case of the King and the Birmingham Gas Works, in 1823 (1 B. & C. 506), the question was, whether the Gas Company should be rated on their profits, or on the value of the property occupied; and Chief Justice Abbot said, "The question proposed to us is, not whether the Company be ratable for their buildings above ground, or their pipes under ground, but to what amount they are ratable. I am of opinion, that *the amount in respect of which they are ratable, is the sum for which the buildings, trunks, and pipes would let* to a person who is willing to carry on the business there. It appears, from the statement in the case, that the premises, trunks, and pipes, if rated to the poor as other lands in the parish, that is, if the profits arising from the sale of gas are not included, are worth 200*l.* per annum, but if the profits are included then they are worth 800*l.* per annum. I am of opinion that the *profits are not* in this case *ratable.* If they were, a blacksmith's forge might be rated, not at what it would let for, but at the sum which the blacksmith acquires by it. The distinction between the cases cited and the present is, that here the profits rated are those of a manufactory, which are obtained by applying

the skill and industry of man to capital brought from a distance for that purpose; they are very different from the profits of canals or of mineral waters, which are products arising within the parish, and rendering the land in which they are situate more valuable. The rate must be amended by inserting 200*l.*"

Mr. Justice Bayley says, "This is really a question of quantum (i. e. whether the rate was to be upon rent, or rent and profits). In most of the cases cited the question was, whether the property was ratable or not; and, though the profits may have been referred to as fixing the quantum, the court never went into that question. Here the question of quantum is presented to the court, and a distinction is taken between the value of the land *per se*, and when it is used for the purposes of trade. I am of opinion that the company ought to be assessed, not at a sum equal *to the annual profits of their trade*, but at that sum which the buildings, trunks, and pipes *would produce to them if let at an annual rent* to persons willing to carry on the trade, or that *rent* which the company would be forced to pay if the premises were not their own property."

Justice Holroyd, *inter alia*, says, "The proper criterion for the rate to be imposed on these lands and buildings is *the rent at which they could be let* to a person willing to carry on the business."

In the King and Oxford Canal in 1824 (4 B. & C. p. 76), the question arose as to the amount at which the tolls of the canal were to be rated to the poor, as arising from land covered with water. Chief Justice Abbot says, "Then as to the amount, it appears that other lands are rated according to the amount which would be obtained by *letting them at a rent.* This company therefore must be rated according to the same rules.

In the year 1829, another case occurs of the King *v.* the Trustees of the Duke of Bridgewater (9 B. & C. p. 68), where the same question arose, as to whether the Trustees should be rated according to the profits, or according to the rent at which the tolls would let. Whereupon, the counsel arguing that there was nothing wrong in rating the Trustees for the whole profits derived from the land, for that farmers were also rated upon the same principle, Justice Bayley interrupted them and said, "The farmer *is rated on his rent, not on his profits.* The King and Attwood (6 B. & C. p. 277) shows that the owner and occupier of a coal-mine ought to be rated *for what it would let.* The true ground for rating a farmer *to the amount of his rent alone* is, that his *profits arise from his stock, which is not ratable:*" and in delivering his judgment he says, "We have no doubt that the Trustees must be rated *as occupiers of land,* and that the same principles must be

adopted whether the party be owner and occupier, or occupier only. If *land be occupied by a person as a farmer, the value of the occupation is the rent paid by him for it.* That, however, is not supposed to be the value of the land, or of its produce, minus the expense of producing it, but the value after deducting the expenses of cultivation and of the farmer's subsistence. Here the rate was made upon the full amount of the gross receipts. * * * I lay out of consideration the fact of the Trustees being carriers, because their occupation only is to be considered: the profits of carrying goods are the profits of their trade. The tonnage is the profit of the land occupied by them. The other sums received by them constitute the profit of their trade. The principle of our decision in this case is, that the same rule is to be applied to *all occupiers*, and that the *rent, or sum at which the land will let, is the criterion of the value of occupation.* The same principles are recognised in the King *v.* Tomlinson (9 B. & C. 164), and in the King *v.* Lower Milton (9 B. & C. 810).

No one can read these judgments without being satisfied that tenants, who are rated as occupiers, are to be rated according to the value of their occupation alone, and not upon their profits. We have traced these decisions from the time of Queen Anne. We find Mr. Justice Aston (a name

looked up to by the profession with respect) declaring in 1760, nearly 70 years ago, that, for 140 years before his time, the question raised in Sir Anthony Earby's case (2 Bulstrode, 354), whether personal property was liable to be rated, had never been acted upon, that is, within forty years from the time of passing the 43rd of Elizabeth. In 1775, we have Lord Mansfield's opinion still more decisive. From 1823 down to 1829, the year immediately preceding that of the King and Joddrell, we have the judgments of Lord Tenterden, Mr. Justice Bayley, and the other judges of the Court of King's Bench, delivered in a series of cases, on these specific points—whether an occupier is to be rated on his rent alone, or on his rent and profits together. Yet not one of these cases is cited by Mr. Jones, or even hinted at. Now this is very extraordinary, inasmuch as his reader is kept completely in the dark, as to the existence of any such cases. At all events, he can hardly acquit himself of negligence in not affording to his reader the means of judging for himself; yet, so far from it, he leads him to believe, that the decisions of all the previous cases are in accordance with that of the King *v.* Joddrell, for he affirms, p. 19, "That the existing law, previously to the decision of the King *v.* Joddrell, actually was, what that decision

declares it to be, I have heard no lawyer venture to deny."* At p. 45 we have—"Now the claim of the clergy to have some allowance made for the omission of the occupiers' profits from the rate, is founded, we have seen, in the act of Elizabeth, as interpreted by the long chain of decisions which, amidst all the changes of practice, have kept alive the spirit of that act." And again—"I have shown that the law supposed to be created by Joddrell's case is really *the long-established law of the land*, founded on the statute of Elizabeth, and moulded into its present shape *by the force of a series of decisions*, the common object of which has been, to sustain the spirit of that law, and to take care, that no mutations in the mode of administering it, should do wrong or injustice to any party."

Now, where is this series of decisions to be found? and why are they not brought forward? Is there *one* case, except that of the King and Joddrell, in which the slightest allusion is made

* Perhaps Mr. Jones would not have *ventured* to refer so confidently to the opinion of the profession, if the publication of his pamphlet had been delayed till after the discussion which took place upon this subject in the House of Commons, when Sir John Campbell and Sir Edward Sugden declared their opinion, that the case of the "King *v.* Joddrell" was not law, and not one lawyer was to be found in the House who *ventured* to maintain the opposite opinion.

to any such claim on the part of the clergy? I confidently answer—not one. In fact, Mr. Jones does not attempt to adduce more than the solitary case of the King *v.* Brown (8 East. 528, 1807); and, what is more astonishing, the decision in that case does not advance his argument a single step. Indeed, when he cites the case, he begins by admitting that it has no reference to the relative liability of the tithe-owner; and, after straining Lord Ellenborough's expressions respecting the practice of rating, to a sense which was never intended, and which they will not bear, he finishes by acknowledging that this practice never has been, and assuredly never will be, carried so far. I should have been disposed to treat this case as lightly as Mr. Jones has done, if it had not been the only one that he brings forward. Any lawyer would see at a glance that it has no bearing whatever on the question at issue; but, as I write for the public, rather than for professional readers, I shall state shortly the facts of the case. A farmer had let his cows to an under-tenant, called a dairyman, who paid a rent for their use. They were to be pastured on the farm, without any expense to the dairyman, who made his profit by selling the milk. An appeal was made against a poor-rate, on the ground that the dairyman should be rated on his profits, as well as the farmer

on his farm.—Lord Ellenborough decided that the dairyman was not liable, the farmer being already rated on the full profits of the farm.

It is upon this expression of Lord Ellenborough's, "full profits," that Mr. Jones builds up the few passing remarks, which he almost immediately abandons as inapplicable. Mr. Jones must be well aware, that lawyers use the term profits in a very different sense from the political economists—generally speaking, they mean income. An action for *mesne profits* is an action to recover the rent that has accrued during an intervening period. The accruing profits of an estate are the income or rent. In the case of the King *v.* Skingle, above referred to, which was decided nine years before the King *v.* Brown, it was held that a farmer is to be rated at the annual value or rent, at which the farm was worth to be let by the year, in accordance with the rule which has been so fully confirmed by the more recent decisions; and there is no reason to suppose that the farmer, in this case, was rated in any other way. Lord Ellenborough evidently did not know how he had been rated, for he begins his judgment by saying, "The farmer having been rated, *as we must presume*, for the full profits of the farm, it matters not whether the rate, in respect of that farm, could have been better distributed or not, by laying one portion on the far-

mer, and another portion on the dairyman; the appellant's portion of the rate would remain the same in either case:" and, what is very remarkable, he implies distinctly at the end of his judgment that the farmer is not ratable for the ordinary stock on his farm, for he says, "It would be a different case if a farmer derived profit from stock kept on his farm, *but not connected with the management of it*, as if he kept stock which he fed with oil-cakes for sale; there he would be rated separately for that stock, not as stock of his farm, but as stock generally, from which he derived a distinct and separate profit; the present are properly the stock of the farm:" whence it is evident that the farmer was not, in Lord Ellenborough's opinion, ratable for the stock of his farm, or, at least, for that part of the stock, which was necessary for its due cultivation.

But, supposing Lord Ellenborough had meant all that Mr. Jones wishes him to mean, (and he does seem to have retained the notion that personal property generally was by law ratable,) it is merely one of those dicta, which Lord Mansfield alludes to as extra-judicial, and, therefore, of comparatively minor importance. The profession are as much alive now, as they were in the time of Lord Mansfield and Mr. Justice Aston, to the difference between a dictum, let fall in relation to circumstances not immediately before

the court, and a judgment, pronounced upon points directly in question in the case, and involving important results to the suitors. So that after all, the long chain of decisions to which Mr. Jones refers with so much confidence, and on which he rests his whole argument, dwindles into this solitary dictum—a dictum delivered in a case, the facts of which have no bearing whatever on the relative liabilities of farmer and tithe-owner.

Mr. Jones then refers to the authority of Mr. Nolan, a very respectable barrister, who wrote a Manual on the Poor Law, acknowledged by the profession as a good book of reference, and of direction, when supported by the authority of decided cases, but of very little value when dependent on the mere speculations of Mr. Nolan himself, who was better known as an agreeable companion than distinguished for his reputation as a lawyer. I have already quoted a passage, in which he states that the rating of personal property has been abandoned. I shall now give two or three extracts from his speculations on the mode of rating real property.

He points out that there are three modes of rating it. 1. By the rack-rent. 2. By a valuation where the land is occupied by the proprietor. 3. By an annual per centage calculated on the purchase-money. And he then goes on to

say, "All these modes proceed upon the assumption, that the rack-rent is the criterion of the value upon which the tax is laid; but this principle is fallacious; rent being only so much of the actual value as the tenant can afford to pay his landlord, deducting the expense of cultivation, and a reasonable remuneration for trouble and time. The rent therefore is the landlord's profit, the reasonable remuneration is the tenant's profit; both come from the land, and form part of its productive value. When land is occupied by the proprietor, he receives both these profits; when it is demised to a tenant, they are divided."

I quote this last passage, because it is in substance, and almost in expression, the foundation of the judgment in the case of the King and Joddrell, and is no doubt the passage which has led Mr. Jones to lay so much stress on Mr. Nolan's authority, and to which he was so anxious to direct his reader's attention. After what has been already said, much further reply will, I trust, be unnecessary. It seems never to have occurred to Mr. Nolan, that capital was one of the requisite and essential elements in the cultivation of a farm, and he imagined, no doubt, that the farmer had little else to do, than watch the growth of his crops, and prevent their being damaged. If Mr. Nolan could have witnessed the anxiety, with which every Saturday night, week after week, the farmer

sees his capital dwindle away, till at length the whole lies buried in the ground, or had been harassed by the doubts whether the property so risked would ever be recovered, he would probably have come to a very different conclusion. It is evident that he had no clear conception of the subject. He makes no distinction between the value of the occupation, as measured by the rent, and the profit on the farmer's capital, which is personalty, and is here confounded with the value of the land. The confusion is increased, when he alludes to the proprietor farming his own land, and deriving the profits both of landlord and farmer; forgetting entirely, or being ignorant, that the landlord cannot farm his own land without capital, and that such capital, whether in his hands, or those of the farmer, would still be personalty, the rating of which Mr. Nolan admits to have been long abandoned. But he himself furnishes the best criticism on the speculations in which he had been indulging, by the doubts expressed in the following splendid passage:—

"But the application of a theoretical principle must be limited by the convenience of society, or it defeats the object for which it is introduced. The natural deficiencies and diversities of the human senses and intellect, and the variety of avocations and habits of those, on whom it devolves to make the rate, render it impossible for practice

to follow to its utmost verge, that clear and steady outline, which is marked out by the eye of speculation."

I should really pity the unfortunate overseer, who, upon referring to Mr. Nolan's book for instruction, should happen to stumble upon this passage. If he should be able to follow to its utmost verge this clear and steady outline, I can only say his eye of speculation is far stronger than mine. Luckily, however, Mr. Nolan follows it up in this manner:—

"The incessant investigation of parish officers cannot always lead to an unerring conclusion, and the expenses of litigation would exceed any benefit, which might result from a more accurate assessment, if it could be obtained. The best method therefore seems to be, that the annual value of the property should be assumed as the foundation of the assessment."

In this last conclusion, we have already seen, that the judges have concurred; and it would have saved some time, if we had not been called away to examine the theories of Mr. Nolan, which, as they rest on no legal authority whatever, and are the mere speculations of an unauthorized individual, cannot be considered as affording any support to the decision in Joddrell's case; and perhaps some apology is due to my reader for having so long dwelt upon them.

There is only one further testimony that Mr. Jones summons to his aid, which I must introduce in his own words. He says, p. 33:—"While these sheets are going to the press, a little work is put into my hands, of the existence of which I was not before aware, which proves, beyond all possibility of cavil, that *the principle of law, which made the occupier's profit substantially liable to the rate, has been perfectly familiar, not only to those versed in law-books and cases, but to a very considerable portion of that great body of men, by whom the work of assessing and valuing is practically carried out.* It is 'A Treatise on the Valuation of Property for Poor's Rate,' by J. S. Bayldon. Mr. Bayldon is a surveyor and valuer in considerable practice; he is the author of a work on 'The Art of Valuing Rents and Tillages,' which has reached a third edition. The work on rating has reached a second; and both are used, I am told, as manuals, by a considerable portion of the professional surveyors and valuers. At page 58 he says, 'So much depends upon the seasons, the price of produce, the value of labour, and other expenses which are always variable, that it is extremely difficult to ascertain the profit to be divided betwixt the landlord and tenant, *which is the subject of the rate.*'"

Mr. Jones, having printed the last words in italics, although they are not so printed in the

origiual, leaves an impression on the reader's mind, that Mr. Bayldon intended the whole profit, which was divided between the landlord and the tenant, to be the subject of the rate: when so printed, it can be understood in no other sense, and it would thus become a strong testimony on the part of Mr. Bayldon, in Mr. Jones's favour. The passage is not very clearly expressed. But what is the fact? It is evident from the context that such was not Mr. Bayldon's intention: his opinion throughout his work is, that *the share of profit which falls to the farmer is not subject to rate*; and this very passage is only in explanation of the mode, in which he endeavours to arrive at the fair rent, on which alone the farmer ought to be rated.

I will supply some of Mr. Bayldon's previous statements, which have not been given by Mr. Jones, and without which, it is not possible to understand the true meaning of the passage he has quoted. Mr. Bayldon says, page 44, "Real property is *ratable according to its annual value, or the rent which it is fairly worth*, making adequate allowances for such as is liable to decay." After some observations on the causes which sometimes raise rent above, and sometimes depress it below, the annual worth, he goes on, at p. 54, to point out the mode by which the annual worth or rent may be ascertained. "In rating the land

of a township where the occupiers are chiefly farmers, one way of estimating the average rent different soils are worth, is, by deducting all the expenses and outgoings of cultivating an acre of the best soil, from the average value of its produce; then deduct five per cent. on the capital employed, and ten per cent. as a reasonable profit for the farmer's exertions; the remainder will probably be *the fair annual value*. The same may be done by one acre of the worst land in the township, and the intermediate qualities may be fixed by comparison. Another plan is, to deduct all the expenses of management from the average value of the produce, and then divide the remainder betwixt the landlord and tenant; the one half for rent, and the other half for interest of the tenant's capital, and a maintenance for his family, and profit. In many cases only a trifling difference will be found in the result of these two modes of *ascertaining the annual value*; they both arrive as near the truth as any method yet discovered." Then, at p. 58, follows the passage quoted by Mr. Jones, which, with this explanation, can be understood in no other sense than that intended by Mr. Bayldon; viz., that the landlords' share of the profit (*i.e.* the rent) was alone the subject of the rate.

In short, Mr. Bayldon proceeds throughout his Work on the supposition, that land is to be

rated at its annual value, or the rent which it is fairly worth. He has, moreover, a chapter on Personal Property, in which he states very perspicuously the objections to its being rated; and, with respect to farmers' profits, he says, p. 222, —"A farmer is not ratable for his stock or implements, for one principle of rating is, that no property shall be rated twice. Now, the land being rated on which the cattle are kept, and on which the implements are used to raise the ratable profits of land, it would be a breach of this principle to include them in the assessment." There is another chapter on the Rating of Tithes, in which he points out the method of ascertaining their full value, but without the slightest hint or allusion to any deduction on account of farmers' profits not being rated; notwithstanding which, Mr. Jones does not scruple to draw the following inference from Mr. Bayldon's work:—"*In the mean time, the existence of such a Work, circulated among such a circle of readers, is of itself surely enough to silence the imputation on the clergy, that they are setting up a law new and unheard of by practical men.*" I can only hope that Mr. Jones has not read the Work. I have read it myself only in consequence of the reference made to it in his pamphlet. The inference I draw from it is, that no doubt was entertained among practical men as to the proper mode of rating land and tithes, and

that it is directly opposed to the principle which Mr. Jones wishes to lay down, as the received and established practice.

We come now to the decision in the King *v.* Joddrell, which, as far as it relates to the discussion respecting rating farmers' profits, I give at length. Mr. Justice Parke said, "The second objection was that the farmer's share of profit ought to have been rated, or, which is the same thing, that the appellant should have been rated proportionably less; and that objection should in our opinion have prevailed. Of the whole of the annual profits, a part belongs to the landlord in the shape of rent, and part to the tenant, and whenever a rate is according to the rack-rent, the usual and most convenient mode, it is in effect a rate on a part of the profit only: it must therefore in the next place be ascertained, what proportion the rent bears to the total annual profit or value, and that will show in what proportion all other property ought to be rated; if, for instance, the rent is one-half or two-thirds of the total annual profit or value of the land, the rate on all other property should be on a half or two-thirds of its annual value. In this case it is clear, that there was a share of profit received by the tenant, upon which there has been no rate, and in that respect the farmers were assessed in a less proportion of the true annual profit or value than the

appellant. The sessions were therefore wrong in disallowing this objection, and they ought to ascertain the ratio, which the rent of land bears to its average annual profit or value, and assess the appellant for his tithe-rent in the same ratio.

"The case must for these reasons be sent back to the sessions, who must amend the rate, acting as nearly in conformity to the principle here laid down, as their means of investigation will admit. A precise and accurate application of it is, we are well aware, impracticable."

After what has been already written, I have not much to add upon this judgment. It seems as if the learned judge had adopted the speculations of Mr. Nolan, and almost his expressions. The reader cannot fail to observe, how entirely it is opposed to the decisions in the cases before cited; many of which appear to have escaped the recollection of the counsel, and of the court, when the case of the King *v.* Joddrell was under consideration. I would more particularly refer to the case of the King *v.* Birmingham Gas-works, and to the King *v.* Trustees of the Bridgewater Canal.

I omit purposely any detailed remarks on the case of the King *v.* Adams, which came before the court two years after that of the King *v.* Joddrell, because it would lengthen the discussion, and is foreign to my immediate object of showing that the decision in the King *v.* Joddrell was

inconsistent with all the *previous* decisions; but no one can refer to the judgment delivered by the same judge in the case of the King v. Adams, without remarking, how entirely these previous decisions are confirmed, when he sums up his judgment in the following terms:—"The cases, especially those of a more recent date, in which the principle of rating has been more fully discussed and considered, will be found to have established this rule of rating, which is, in other words, that all lands are to be assessed in proportion to the net rent, which a tenant at rack-rent would pay, he discharging all rates, taxes, and outgoings."

View these different decisions in what light you please, no reasoning can make them consistent with each other; and as not one case is to be found prior to the King v. Joddrell, in which it is decided that a farmer is to be rated both on his rent and profits, (and if there be such a case, it was incumbent on Mr. Jones, if his argument be good for anything to produce it,) I am warranted in affirming that the King v. Joddrell has introduced a system of rating to the poor-rate, totally unknown before, and, what is of still more importance, totally impracticable.

The learned judge, who gave judgment in this case, shows by his concluding sentence, that he is thoroughly aware of this impracticability; but what a burden has he thrown upon the overseers,

and upon the magistrates at sessions, when he desires them to act as much in conformity with the principle he lays down, as their means of investigation will admit. Why, they have no means of investigation. They have no means of knowing, whether the farmer is making losses or profits. They have no right to put a single question to a farmer, either as to his profits or his losses, or the amount of capital he employs, or the value he puts upon his own skill and superintendence. Every one of these particulars must be guessed at, before any deduction can be made, and in respect to every farmer in the parish. This may be thought by some persons to be no difficult matter. Mr. Jones considers it as very easy, and I shall have some occasion to remark upon his contrivances for that purpose by and by.

Amongst the other difficulties, with which the magistrates and parish officers would be encumbered, I should be glad to know, what is to be done in the case of a clergyman or lay impropriator, having land in a parish as well as tithes, and who, we will suppose, lets his land to a tenant, tithe free. In this case, the landlord and the tithe-owner are the same person, receiving a rent equivalent, to what, under ordinary circumstances, would be paid under the form of tithe and rent. Is the overseer in this case to ascertain how much of the rent is to be considered as

tithe, and make a deduction on that part alone, proportionate to tenant's profits, leaving the other part of the rent without a deduction? or is he to make no deduction whatever? Or suppose that a parish has been exonerated from tithe by modus, or inclosure, or any other cause, are the rates in that parish to be assessed on the tithe-free rent, or are deductions to be allowed on that portion of the rent, which answers to the tithe? Or, what would be still more complicated, although a case of common occurrence, suppose that one-half, or two-thirds of the land in the parish are tithe-free, and that the land which is titheable lets at twenty shillings per acre, and six shillings tithe, and the tithe-free remainder lets at twenty-six shillings per acre. In this case, the tithe-free land would be rated at twenty-six shillings per acre, whilst the rest would be rated upon the aggregate of both rent and tithe, at twenty-three or twenty-four shillings, according to the deduction made from the rate on the tithe. There is positively no end to the confusion that would ensue, nor to the difficulties which the overseer would have to overcome.

But supposing Lord Mansfield, and every judge, that has ever given an opinion on the difficulty of rating personal property, including Mr. Nolan, to be wrong, and that Mr. Jones alone is right, and that the rating of farmers' profits, or,

what is tantamount, making a proportionate deduction from the assessment on the tithe-owner, were practicable, let us just examine the consequences that would follow.

In the first place, Mr. Jones knows, as well as every one else (notwithstanding the hypothetical case he puts at page 13 of his pamphlet), that, under existing circumstances, and for all practical purposes, every rate paid by the farmer for the occupation of his land, is just so much deducted from the rent of the landlord. When rent is fairly adjusted, the farmer will obtain no more for the capital he risks in farming, than the ordinary return of profits on that capital. If you increase his rates, or other outgoings, he cannot afford to let it fall on his profits. Every rate or outgoing imposed upon the land, is calculated by the farmer, when he enters upon his farm, and he will give less rent in proportion as those outgoings are more. If, then, in addition to the rate that has been hitherto imposed, and measured by his rent, you rate him also on his profits, he must either receive less than the ordinary return of profits on his capital, or must get a further deduction from his rents. But it is clear, so long as there are other employments in which the ordinary profits of stock can be obtained, he will sooner abandon his farm than submit to get less than that ordinary return. He will therefore claim, and obtain, the

difference from his landlord, who will thus be virtually rated twice over for the same land, contrary to every principle of rating; and the inevitable consequence of the new system will be, a revolution, *pro tanto*, in the value of landed property.

But this is not all. It is evident, that if the clergyman of the parish suffers an injustice in consequence of the farmer's profits not being assessed, the injustice does not fall upon him alone, but also upon every other occupier in the parish, who does not make tenant's profits. They have all an equal right to complain, that the farmer is rated too low, and that their assessments ought to be reduced below the annual value of their premises, in order to put them on the same footing. The lay tithe owner, the householder, the labourer, whose cottage is rated, have every one of them an equal claim with the clergyman to this deduction.

I envy not the office of overseer, if this is to be the result of the new law, as laid down in the King *v.* Joddrell; and yet there is no escape from this necessary consequence. Passing over, however, the difficulty of ascertaining profits, and making proportionate deductions from this enormous mass of property—with what redoubled force will these deductions fall upon the property of the landholder! I have not thought it worth while, in the course of this discussion, to waste time in

proving, that it is precisely the same thing, whether farmers' profits are actually rated, or proportionate deductions made from the assessments on other property; nor is it necessary now to show, that for every deduction made upon the assessment of any one description of property, the charge of the poor's-rate must fall so much the more heavily upon all that property which obtains no deduction; since it is self-evident, if a given sum is to be raised for the support of the poor, that in proportion as one kind of property is allowed to escape from the burthen, a proportionably higher assessment must be imposed on the remainder.

Now, independently of other property, which might claim deductions on the principle laid down in the King *v.* Joddrell, let us just see what may be the probable amount on which deductions might be claimed for houses alone. In 1831, the return of the number of inhabited houses was 2,481,544. Supposing these houses, one with another, would average 10*l.* of rent, they would amount to about twenty-five millions of annual rental, ratable to poor's-rate. Upon this enormous sum deductions would be to be made, proportionate to the deduction made to the clergyman. I do not know what the clergy really claim, but I have heard of their asking 50 per cent. Whatever it be, the additional burthen thus

created, must be borne by the land alone, without a possibility of escape; so that, besides the loss which all landed property would sustain by the relief given to the tithe-owner, it would be burthened with a further charge arising from the exemption, to the same degree, of this enormous amount of house-property.

The learned judge, who delivered the judgment of the court in Joddrell's case, could not have been aware of the very great change his decision would bring about, in the relative value of land, as compared with that of houses; and Mr. Jones, in advocating the claims of the clergy, has carefully suppressed all allusion to it, although he knows it to be the inevitable consequence of the principle laid down.

Let us now recur to the mode, which Mr. Jones affirms, might so easily be adopted, for estimating the profits of the farmers, and making the proportionate reductions on the assessments of the clergy (of the houses he takes no notice). He says "First, then, the rule in Joddrell's case is not impracticable, but may, with *great ease*, be carried out in practice. Many parishes are procuring re-valuations for the purposes of assessments. In every such case the valuers, in calculating the rent, make some allowance in their own minds for the occupier's profits; they must do so or they could not estimate at all, what

quantity of the gross produce could be afforded as rent. They can give therefore without any additional trouble the estimated *average* profit of every holding in the parish. Those profits however may bear different proportions to the rent, in the cases of different occupiers, and what might be a fair allowance to the clergyman for the omission of profits on one farm of 100*l.* a year value, may be too great an allowance as to another of the same value. This is true, but it creates no real difficulty as between the clergyman and the occupiers or land-owners; the whole parish must be considered as one farm, and the whole profits be compared with the whole rents, to ascertain the proportion of the ratable issues of the land, which is omitted when made on the rents alone. Thus in any parish let A pay 600*l.* rent and make 300*l.* profit, and B pay 600*l.* rent and make 200*l.* profit. The addition of these sums gives 1700*l.* as the ratable income. It is proposed to rate on the rents exclusively, that is on 12-17ths of the ratable income; then 12-17ths of the tithe should be the proportion rated; and if there were fifty occupiers, each with a profit bearing a different proportion to the rent, the proportion of their joint ratable income, omitted from the rate, might be ascertained with the same ease;" and he adds in a note, "The solemn assurances that no one rate of profit can safely be assumed, because

seasons, &c., vary constantly, are all but ludicrous. The judges have always scouted attempts to escape taxation on such grounds."

Great ease, indeed! Was there ever before such a proposition made for redressing an act of injustice? The complaint is, that profits may bear very different proportions to the rent, in the case of different occupiers, and what might be a fair allowance to the clergyman on one farm of 100*l.* value, may be too great on another of the same value; and the question is, how to throw the additional burthen that is created by this allowance, on each of the farmers in proportion to his profits. To which the clergyman will reply in the language of Mr. Jones.—Gentlemen, there is no real difficulty in the case; as between you and me I consider you all as renting one farm. It is true there are fifty of you, some making large profits, some making none at all, and it may be, some incurring heavy losses. But I won't be unfair with you. All I ask is that you should estimate by guess, or in any other way, the average profits of the whole body; you can then easily calculate the allowance to be made to me, which is all that I care about, and the extra burden will be divided amongst you according to your rents. You can see that it is a sort of give and take system, by which some will gain, and others suffer; but you will have the consolation to know, that whatever

any one of you may lose, will go into the pocket of his neighbour; and thus it will make no difference to the parish in the aggregate. I can assure you, that although some objections have been raised to this mode of taking an average, on the ground that bad crops, and partial losses, would render it most grievous to the individuals overcharged, such objections would be scouted by the judges, as all but ludicrous.

I shall not dwell longer on this part of the subject. Enough has been said to prove, that profits of stock never have been generally rated, and never can be rated, without such an inquisition into the private affairs of every man engaged in business, as would be absolutely intolerable. That if such an inquisition were attempted, it would be met by every species of fraud and concealment, and would lead to interminable litigation. That it has been discouraged by the judges from within a very few years of the time of passing the statute of Elizabeth, and with respect to farmers' profits, it has not only been decided so far back as the reign of Queen Anne, that they shall not be rated, but there are numerous cases since that time, continued up to the very year preceding the unfortunate decision in the case of the King *v.* Joddrell, in which it has been held that occupiers shall be rated on their rents alone, and not on their profits.

It is clear, therefore, that the effect of Joddrell's case, if it were adopted as the rule of rating, would be to impose on the land a burthen, which it has never yet borne; to give an advantage to the tithe-owner and householder which they never before enjoyed, or even dreamed of; and to subject the business of the farmer to a taxation on his profits, from which all other capitalists are exempt. The land-owner and tithe-owner share in fact the rent of the land between them. It is well known that the rates do really fall on the rent, and not on the farmer. Is it not just then that those, who share the rent, should share the burthen of the rates in the same proportion?

It now only remains for me to add a few remarks, on the general conduct of Mr. Jones's argument. In fact, he would lead one to believe, that in all the cases, that had previously come before the court, the interests of the clergymen had slept, as it were, in abeyance, without ever attracting its attention; and that in consequence, the judges had felt no difficulty in recognising the rule, which the vestry and the farmers laid down, to rate at one-third, or one-half, or two-thirds of the real value of the ratable property, and never interfered with these casual and arbitrary proportions, so long as the rule was made general, and no injustice was done between the parties themselves.

Now, if there is any truth in this representation, it is surely rather extraordinary, that the practice should have been adopted for centuries, without exciting any alarm among the clergy, and without interference from the courts of law; although, during the whole of that time, the tithe-owner's interests were as much involved, as they are at the present moment. Yet I defy Mr. Jones to produce a single case, prior to that of Joddrell, where it has been decided, either that the profits of farmers' stock should be rated, or that tithe-owners should have a deduction in consequence of the omission. On the contrary, we have shown that it has been decided over and over again, that occupiers should be rated, only on their rents.

Now if this principle, or rule of rating, had been an act of injustice, is it to be believed, that all the tithe-owners, and all the householders in the kingdom, would have submitted to it without a murmur till the year 1830? and that it should have been reserved for the ingenious rector of a parish in Huntingdonshire, to discover and redress the injustice, under which half the rate-payers in the country had been so long suffering; and that even after he had succeeded in obtaining a decision in favour of his newly-discovered principle, that decision, instead of being hailed as a deliverance from oppression, should have slept un-

noticed on the lawyer's book-shelf, and remained, for all practical purposes, a dead letter to the present hour? So far as I have heard, there is but one instance in which the precedent has been followed in practice. It is the case mentioned by Mr. Jones, of a rector in Kent, who appealed against a rate, at the suggestion (if I am not misinformed) of Mr. Jones himself, and succeeded in obtaining a deduction, on the decision of a barrister, to whom the case was referred.

Speaking generally, Joddrell's case was entirely unknown to the public, and to parochial authorities, until it was brought into notice by a circular of the Poor Law Commissioners. The principle thus announced, caused universal astonishment among all those who paid any attention to the subject, and was considered so totally impracticable, and so inconsistent with all former usage, that the professional surveyors employed in the business of valuing, found it impossible to carry it into effect, and have, therefore, continued to make their valuations in the manner to which they had been previously accustomed. I was myself applied to by a surveyor and land-agent, in very extensive business, to know in what way he was to act. He considered the principle not only to be new, but contrary to his notions of justice and equity: nevertheless, as it was declared to be law, he felt that he had no option, and was bound

to follow out the notice circulated by the Poor Law Commissioners, until the decision was reversed, although he was totally at a loss to devise any scheme or definite mode of complying with it.

I have now brought to a close my observations on that part of the argument in Mr. Jones's pamphlet which relates to the King *v.* Joddrell; and I hope my reader's patience will not be exhausted if I offer a few concluding remarks on the *argumentum ad misericordiam* with which Mr. Jones opens the discussion. He solicits the sympathies of the public for the clergy, as consisting of 20,000 men, about one half of whom are enjoying benefices, of which 6725 are under 300*l.* a-year. He adds, "The poverty of so large a body of ministers of religion is a subject of public sorrow." Every one must lament with Mr. Jones that such should be the case. The return of ecclesiastical revenues, taken from the Commissioners' Report, gives the total yearly amount at about 3,500,000*l.* Now if this sum is not sufficient to provide religious instructors for the members of the established church, by all means let it be increased, so that the clergy may be supported as becomes men of education, undertaking so high a calling. But it is rather too much, when property to this extent has been given to the profession, subject to a certain charge for the benefit of the poor, that the individual members should turn round

and complain of this charge as a grievance; and endeavour to escape by throwing an extra burthen upon others, who suffer equally with themselves. In those parishes where the commutation-corn-rent has been agreed upon, which have come under my own observation, the share of land, or rather of rent, allotted to the incumbent, has amounted to a sum between one-quarter and one-fifth of the whole rental paid to the landed proprietors; nearer, indeed, the former than the latter. In all the inclosures, that have taken place during the last sixty years, the rights of the clergy have been watched and guarded by commissioners appointed in each Inclosure Bill, to take care of their interests, yet they scarcely ever obtained more than one-fifth of the arable, one-eighth of the grass, and one-tenth of the woodland. It must then be admitted to be a liberal allowance, when, under the present Tithe Bill, they get nearly one-fourth of the whole. Besides, it should be especially remembered, that under an Inclosure Act, the incumbent had either to build farm buildings, or let the land at a proportionably lower rent; that he had to incur the risk of tenants failing, or being unable to pay their rents, and to submit to all the drawbacks of repairs and other outgoings, which fall so heavily on the landowner. Surely then, now that the clergyman receives a net rent, free from risk, and without

drawback, he cannot but be satisfied with the change. Indeed there needs no stronger proof of their satisfaction, than the silent acquiescence of the profession generally, in the provisions of the New Act for the Commutation of Tithes.

But this is not all. The clergy, we are told, notwithstanding this provision, have not only a claim on the benevolence of the public, but they have a right to complain of the law of rating, which subjects them to a tax on the wages of their personal labour, from which that same law exempts the members of all other callings and professions, however rich." Let Mr Jones point out any other profession, that is endowed with such a mass of property, to be distributed amongst its members. The clergyman, in the very outset of his career, is presented with a freehold estate —an interest for life in the surplus profits of land, similar to rent; not a precarious and uncertain income, as in other professions; for all that portion of the clerical income which is precarious, namely, that which is derived from fees and offerings, is not charged to the poor-rate. But the benefined clergyman is, to all intents and purposes, a landed proprietor. His tithe is a rent, and, what is more, is chargeable upon produce in the first instance, and sometimes exhausts all surplus profits, so as to leave no rent to the land-owner. He receives the estate, subject to the same charges as his

fellow-proprietor, the landlord, and he knows this when he accepts it. What right, then, has he to complain? But, besides these rates and charges, he has professional duties to perform. Undoubtedly; they are the return he makes for his freehold—generally speaking they are the only price he pays for it. I very much doubt, whether any of these objections are made when the clergyman is about to be presented to his living. Why, then, does he murmur after he has taken possession? Mr. Jones has presented us, at p. 37, with a letter, which he offers as a sample, out of some hundreds, that he states himself to have received from clergymen, complaining of being assessed under the new act, to the full income accruing from their tithe. I cannot suppose he has selected the one, least suited to his purpose; yet what a hopeless case it must be that rests upon reasoning so baseless as the following! Mr. Jones's correspondent says: "I object to my assessment, because it is made upon a totally different principle, from that of a farmer, *i. e.*, upon the produce, instead of the profit. The farmer, if assessed on the same principle that I am, would have to pay rates, not upon his net rental, but upon his crops."

Why, of course the tithe-owner is rated upon the produce he receives, because to him it is all profit; or, if he pleases so to call it, all net rental. And the farmer is also rated on the net annual

value of his farm. If he were to be rated on his crops, he would be rated not on his receipts, but on that which is to pay the outgoings and expenses of the cultivation.

Then again he says, "The net annual value of my living is not one farthing, my income being barely sufficient to remunerate me for the performance of my public duties." So that a man receiving 1000*l.* a-year for the performance of certain duties, receives, in fact, nothing, because he is only remunerated. I must think, if Mr. Jones had no better sample to select, than such absurdity as this, he had much better not have dropped a hint about his hundreds of letters.

After all, what is the conclusion at which Mr. Jones arrives? Simply this, that personal property, and the profits of stock, having escaped from being assessed to the poor's-rate, the burthen falls so much the heavier on the tithe-owner; truly, there needs no ghost to tell us that. But he would have stated the matter of fact much more fairly, if he had said—"It having been found absolutely impracticable, as well as impolitic, to rate the profits of stock, the whole burthen of poor-rates falls upon real property, pressing both the land-owner and the tithe-owner, with proportionally increased severity. The whole real rental is enjoyed between them, and they must bear the burthen; but it would be an act of gross

injustice to relieve the one, by throwing his share of the burthen on the back of the other; yet this is the whole drift of Mr. Jones's pamphlet. It is the result that must follow, if the decision in the King *v.* Joddrell should ever be confirmed; and with this further aggravation, that the occupier of land will have no means of redress. If he were to be rated on his profits, he would know whether he was fairly rated or not, and would appeal, if other farmers or tradesmen were not rated in the same manner; whereas, if a deduction is made from the tithe-owner's assessment, he will have to bear his proportion of the increased rate that must follow, without knowing in what degree the extra charge has fallen upon him, and without the possibility of having it fairly apportioned between himself and his neighbours. So that, after passing an Act of Parliament, enacting that the farmer shall be rated according to the value, at which the land is worth to be let by the year, a principle is here let in, that will entirely counteract the intention of the new Assessment Act, and rate him at *more* than his land is worth to be let by the year. By the new method, he would not indeed be taxed directly; but the same thing is done indirectly, by allowing deductions which relieve the tithe-owner, and by parity of reasoning the householder. Every deduction renders a further rate necessary from which the farmer alone

is not allowed to escape, to his great wrong, during the continuance of his lease, and to his landlord's injury at its termination.

I must think it a very short-sighted policy, on the part of the clergy, and of their champion, to exasperate, by such a proceeding, the great body of farmers and landed proprietors against the church. At the moment when the commutation of tithe had held out the hope of peace and good-will between the shepherd and his flock, it is hard that the Assessment Act should plant a thorn, that will be a rankling source of irritation between a clergyman and his parishioners for ever,—for never would there be an end of angry collision, whilst the farmers are to be subjected to the annoyance of a continued inquiry into the amount of their profits, or to an unfair burthen, imposed without inquiry.

Another claim for deduction has, I understand, been set up, on the ground that the commutation rent-charge is not to be the amount on which the tithe-owner is to be assessed, and that he ought to be rated only on what the commutation rent would let for to a tenant. This really exceeds all reasonable limits. Why, what have we been about in estimating the value of the tithes in those parishes, where a commutation rent-charge has been agreed upon? Has it not been to ascertain what sum the tithes are really worth, and thus to fix

the rent at which they are to be let for ever? Having done this, so as to give to the tithe-owner his full claims, is he to turn round and say, True, the tithes are worth this rent, but then we have to inquire at what rent this rent will let, before we can tell its true value? What is the subject of the rate? The tithe. What is it worth to be let at? The commutation-rent. Are we to go on and ask the rent of the rent? Look at the cases in the law books, or at those which have been quoted in the former part of this pamphlet, and see how the judges consider themselves relieved, when on inquiry about the annual value of any object, they find that it has actually been let at a rent, and that the quantum of value is thus put beyond dispute. What would be said of a land-owner who, being virtually assessed through his tenant the farmer on the rent, were to object, and to insist that the value of the land was not the rent, but the rent of the rent? It is a solecism that carries its own absurdity on the face of it. But it is said, there is the trouble and expense of collecting the rent. Undoubtedly, if the tithe-owner chooses to employ an agent for that purpose, he must pay him; but such employment is optional, and he has to draw the balance for himself, between the comfort, and the expense of paying for it. But what have the tithe-payers, or the rate-payers, to do with this consideration? It would hardly be admitted in favour

of the land-owner. It never has been admitted; nor has he ever been allowed deductions on account of the expenses of collecting his rents.

The taunts that are daily thrown out against the clergy for blowing hot and cold, for swelling the value of their tithes to the utmost, when it is a question of commutation, and pressing for deductions when there is a question of rating them to the relief of the poor; claiming, as I have heard it expressed, one-fourth of the landed rental, but objecting to be rated at more than one-eighth—these taunts, I say, are exceedingly grating to the friends of the Established Church; and I am confident, they are much aggravated by the line of argument which Mr. Jones, as the champion of the church, has adopted, and the insinuations he throws out against the landed gentry of England, as if they were disposed to rob the church, for the purpose of dividing the spoil amongst themselves. Such language can answer no good purpose.

Indeed it may be doubted, whether, after being constituted one of a tribunal for conducting the commutation of tithe, and having been sworn faithfully, *impartially*, and honestly to fulfil all the powers and duties of a commissioner, Mr. Jones has been altogether prudent in assuming the character of an unflinching advocate, where he is called upon to act as a judge. At all events I am quite confident, that if the lay commissioners had avowed only one half of the partisanship for

the tithe-payers, which Mr. Jones has, without scruple, let fall in favour of the tithe-owners, there would have been an angry outburst in every parish of the kingdom, against such a startling declaration.

But I have done; and my object will be gained, if I have afforded to my readers the means of coming to a more correct conclusion on this really important question, than they can possibly do, by relying on the representations of Mr. Jones. I should be sorry to throw out any imputations of improper motives, or to express myself in terms, that might be deemed wanting in courtesy; at the same time I must speak of the pamphlet as I find it. I consider it, an unfair pamphlet; more clever and dexterous, on the wrong side of a question, than any I have ever met with, yet still, distinctly, the pamphlet of a partisan, and avowed as such. Many facts and cases are wholly suppressed; others very partially stated. I do not know to what extent such a course may be thought justifiable, but I am of opinion that Mr. Jones's best friends will think he has given the true explanation, when he states that he is "prepared to be treated as a partial advocate, influenced, perhaps blinded, by professional zeal."

THE END.

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THE

PRINCIPLES

OF

MR. SHAW LEFEVRE'S

PAROCHIAL ASSESSMENTS BILL,

AND THE

TITHE COMMUTATION ACT,

COMPARED,

IN A LETTER

TO THE

REV. RICHARD JONES, M.A.

ONE OF THE TITHE COMMISSIONERS FOR ENGLAND AND WALES.

BY THE

REV. CHARLES MILLER, M.A.

VICAR OF HARLOW, ESSEX.

" Never for any cause, or on any occasion, affirm a principle in which you do not believe, or refuse to affirm a principle in which you do believe."
Lord Stanley's Speech at Merchant Tailors' Hall, May 12, 1838.

" Causæ ecclesiæ publicis causis æquiparantur. Summa est ratio quæ pro religione facit."—*Maxims of the Law.*

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1839.

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ST. JOHN'S SQUARE.

LETTER,

&c.

REVEREND SIR,

As a Clergyman of the Church established by law in this country, I am anxious to return my acknowledgements to you for your publication relating to a Bill brought into Parliament last session, for the regulation of Parochial Assessments[1]. You say, in effect, of the Bill, against which your Protest is directed, that if its title, its recitals, and enacting part, are compared together, it will be seen to be marked by some characteristics not often to be read, as you hope, on the face of the acts of our Legislature[2]; and again, you speak of it as "*an act of*

[1] "Remarks on the manner in which Tithe should be assessed to the Poor's Rate under the existing law, with a Protest against the change which will be produced in that law by a Bill introduced into the House of Commons by Mr. Shaw Lefevre." Shaw and Sons, Fetter Lane.

[2] Remarks, &c., p. 45.

direct spoliation, in the face of two recent legislative pledges that this should not be[1]." This, Sir, is very strong language; and yet surely it is not stronger than the circumstances of the case require[2]. That you have, in an eminent degree, been instrumental in putting off, for the present, the further consideration of this question by the Legislature, cannot be doubted; and your able Protest entitles you to the

[1] Remarks, &c., p. 62.

[2] Since the above was written, I have seen a letter to the Right Hon. Lord J. Russell, by John Phillpotts, Esq., M.P., Barrister at Law, (Hatchard and Son,) in answer to your Protest. It is there asserted, (p. 4,) that "the question at issue is a dry question of law." The proper course would then have been that which I perceive it is now proposed to adopt, an appeal to a legal tribunal. The learned author observes, (p. 17,) in allusion to the case of Rex *v.* Joddrell, "It is impossible to approach the decision in that case, *without the greatest diffidence.*" How then can the supporters of Mr. Shaw Lefevre's Bill justify themselves from the charge you bring against them. It cannot be maintained that the authors and supporters of that Bill approached the decision with any diffidence.

There are in reality two points at issue; First, the dry point of law, of which there may be doubts; and, Secondly, the course by which it was proposed to remove the doubts. Mr. Phillpotts, as it appears to me, has not kept these points sufficiently distinct; and has consequently represented your censures in an unfair light. The severe terms which you have made use of, and of which complaint is made, were not directed against "*those who differ from you on the point* (of law) *at issue*," but *against the Bill viewed with reference to the circumstances under which it was introduced into Parliament.*

best thanks of those, whether Laity or Clergy, who respect the constitutional rights and privileges of the Church. But though I thus fully agree with you as to the nature, the origin, and the principles of this Bill, and as sincerely deplore the feeling in which it originated, I cannot but regard its introduction into Parliament at this juncture, as likely to lead to beneficial consequences; inasmuch as it developes the character of another measure, which, not very long ago, received the sanction of the Legislature. In this view I also hope, that, independently of its immediate good effect, it will be useful in directing attention to the only grounds, as it appears to me, on which encroachments upon Church Property can be effectually resisted. I cannot but feel concern that certain expressions should have escaped you, which seem altogether inconsistent with those great principles on which you have rested the defence of our cause. If you will do me the favour to read the letter to Mr. Palmer, of which I am the author[1], you will perceive that I allude to the Tithe Commutation Act: you will probably also discover my reason for objecting to those expressions in your Protest, and, perhaps, give me the credit of having paid some attention to the

[1] "Some Observations on the dangerous principles and tendency of the Tithe Act, in a Letter to George Palmer, Esq., M. P." London: Rivingtons, 1838.

subject. I ask no one to attach value to my opinions, but only to the authorities on which they rest. These authorities are unquestionable; and I must contend that the greater weight is to be attached to them, because, though differing in time, place, and occasion, they all terminate in one and the same result. I have appealed to speeches at a county meeting, never exceeded in respectability; I have appealed to debates in Parliament, and Acts of Parliament; to the decisions of Judges, and the charges of Bishops. No one can say that I have advocated views peculiar to myself; and I can now make some addition to the high authorities which I have adduced. The Bishop of Oxford, in a charge recently delivered to the Clergy of his diocese, thus expresses himself: "I have not hitherto heard that the effects of the Tithe Commutation press heavily upon the Clergy. Doubtless we ought to give up much for the sake of peace. *But it must not be forgotten that we have surrendered a right on which the very existence of the Establishment may depend;* for it is indisputable, that if the course just legalized had been adopted at the Reformation, the Clergy would at this time have been without the means of subsistence. I pray God that my apprehensions on this score may not be realized[1]." I have also been credibly informed that a

[1] "Charge delivered to the Clergy of the Diocese of Oxford. July and August, 1838," p. 17.

very high legal authority [1] has stated his private opinion, that this measure cannot be carried into effect, partly alluding, perhaps, to the difficulties which will arise from it in the transfer of property, and which were pointed out to me by Mr. Palmer. For by the eighty-first section of the Tithe Act, if the apportioned rent-charge should be in arrear, the party interested may distrain upon any part of the land for arrears of the whole. And according to the maxim *terra transit cum onere*, where the lands cannot be released from the rent-charge, and are divided by the sale of part, the owner of the rent-charge may indiscriminately distrain upon the lands sold, or the lands not sold, for his whole arrears. If A sells a part of his estate to B, the estate will henceforward belong to two owners; but the land sold cannot be released from the rent-charge without a new apportionment [2], which will be attended with

[1] "I take advantage," writes a friend, "of the opportunity of answering your enquiry as to what Lord .... said about the Tithe Act. You know it was merely spoken in common conversation. He said nothing against the principle of such a measure, but that he did not think it could possibly work long, and that it must speedily undergo some amendment, as it will be found almost impossible to carry it into effect."

[2] See §§ 58 and 72 of the Tithe Act. Is there any appeal from the new apportionment under the latter section? If so, here is further expense, uncertainty, and litigation. If not, then three commissioners of the land-tax, and two justices of the peace, are made arbiters of the property of the Church, without its natural guardians having any voice in the matter.

so much difficulty and expense as, in many cases, to be impracticable. And without such new apportionment, the land of A may be distrained upon for the arrears of B, and *vice versâ*.

But if I require any additional authority for my opinions respecting the Tithe Act, I can now appeal to the declarations of a Tithe Commissioner himself. I propose to compare the principle of Mr. Shaw Lefevre's Assessment Bill with that of the Tithe Act. There are many points of resemblance between these two measures; and, as far as principle is to be regarded, they must stand or fall together. I have indeed, in my Letter to Mr. Palmer, adduced some arguments not available for your purpose, and so a part of your Protest is not available for mine. But referring to your chief argument, in the force of which I cordially agree, it seems extraordinary that, while our opinions are so much in unison respecting the Assessment Bill, they should be diametrically opposite on the subject of the Tithe Act. If you object to the indecent haste with which it was proposed to hurry the Assessment Bill through Parliament, it seems to me that you are necessarily adding to my objections against the Tithe Act. The same thought is suggested to my mind, when I read either your appeal to the decisions of judges and an Act of Parliament of the reign of Elizabeth, or your observations on the impolicy and danger of trenching upon the fund which is destined to procure

religious instruction for the people. Taking all these things into consideration, I cannot help calling upon you to review that part of your Protest, where you say that you "look back upon the Commutation Act, as, under all the circumstances of this country, social, economical[1], political, a fair and wise measure; and that you do so without a shadow of doubt and a flutter of disquietude."

Permit me to enter a little more at large into this question. Your words are as follows: "The population is increasing fast. The national wants which that fund is to satisfy are increasing with the population. *Every circumstance which tends to shrivel and diminish such a fund increases the probability that the time is at hand, when it may become inadequate to the wants of the multiplied people. Those*

[1] To facilitate the redemption of tithes, the Act allows the commutation rent to be charged upon a part of the land, provided it be three times the value of the rent-charge. Lands, if impoverished, subject to so heavy a charge as one-third of their whole value, may very possibly be kept entirely out of cultivation. I have recently met with an instance in which unincumbered land had been brought to so low a state, that it would not pay the necessary expenses of farming. But if this evil occurs where the land is unincumbered, it will, I fear, be much more frequent when the land is subject to a heavy rent-charge. The clergyman in the circumstances alluded to will be in the situation of a mortgagee who cannot obtain his interest, and cannot sell or let the property mortgaged. This appears to me one of the numerous economical objections to the Tithe Act.

who live at that day will listen to, those of ordinary foresight in our own may foretell, the tone of austere condemnation in which that Act of Legislation will be judged, which, while it apparently sanctions only a mass of private injuries, commits what will too probably be an irreparable public wrong." (p. 69.) An enlightened system of legislation, then, regards the future as well as the present; and if so, I think you should hesitate, before you pronounce any Act for the *permanent commutation of tithes* a wise measure?

But supposing that tithes ought to be commuted, I search in vain in the pages of your Protest for the reasons why they ought not to be commuted upon fair and equitable principles. The Tithe Act adds something to the revenues of the owners of the soil: "A small gain to that great body, a great loss to those" (the successors of the present clergy) "from whose pockets it is to be extracted." (p. 64.) It cannot, therefore, be a fair measure, according to your own statement.

"It is obvious," you observe, "that if it was discovered that the occupiers had been rating the tithe too high, the fact that too much had been kept back from the clergyman for some years preceding the commutation would be a very bad reason for continuing to rate the clergyman too high for the future." (p. 59.) Nothing can be more fair or sound or just than this reasoning; but here again you are

protesting against the principle of the Tithe Act, which deprives the clergy of property for ever, because they may have relinquished it for a time. Surely it is equally unjust to say to the clergyman, you have been voluntarily receiving too little tithe for the past, and therefore you shall by law receive too little tithe for the future, as it is to say, you have been rated too high for the past, and therefore you shall be rated too high for the future.

"I have shown," you say, "that the Bill through which this wrong is to be inflicted is one which, from its very construction, is unfit to pass Parliament; that it is not, what it professes to be in a delusive title, a declaratory law, but is in truth a bill, of which the purpose is violently to repeal all the statutes and laws of the realm which stand in the way of its framer." (p. 62.) I contend that the Tithe Act is equally delusive in its preamble and contents. The preamble is delusive, because it professes to *amend* the law which it substantially *repeals;* and, as to the delusive provisions for a *voluntary* commutation of tithes, I will repeat the words of Mr. Granville Harcourt Vernon in another matter[1]. "I see something of the Stuart principle about the present plan. It is to be a voluntary act on the part of the Church, only under strong

[1] Debate on Church-rates, March 13, 1837.—Mirror of Parliament, p. 624.

compulsion." May I not reasonably ask, why this delusiveness is to be stigmatized in a Church-rate Bill, and yet allowed to pass without censure in the Tithe Act?

You appeal against the Assessment Bill to the Statute-book and judicial decisions; tracing the law, and the interpretation of the law, from the reign of Elizabeth to the present time. This argument from authority is perfectly sound, and its force is recognised by every law; by the principles of the British Constitution, and by the law of our natural reason.

But here again, if you argue against the Assessment Bill on the ground of ancient laws, I refer you to the pages of Burn and Selden[1] for the antiquity of the law of tithes, and to the provision of Magna Charta for guarding the property of the Church. But what were the laws respecting the possessions of the Church in the reign of Elizabeth, to which you refer? Previously to that reign, ecclesiastical persons might, with the concurrence of certain parties, have freely alienated the lands of the Church; "*whereupon*," says Lord Coke, "*not only great decay of Divine Service, but dilapidations and other inconveniences ensued, and therefore they were disabled and restrained by the Acts* 1 *Eliz.*, 13 *Eliz., and* 1 *Jac.*[2]" The first of these Acts pro-

[1] History of Tithes, passim.

[2] Co. Li. fo. 44.

hibited Bishops from alienating their lands but by lease, as is therein mentioned, excepting that they were still allowed to freely alienate them to the Crown. The next Act[1] similarly restrained other ecclesiastical persons from alienating their possessions, and without any exception in favour of the Crown. The exception in the former Act had been greatly abused by the Earl of Leicester and others; and the evils arising from it were strongly denounced by Archbishop Whitgift to the Queen. Read and consider his speech on this subject, related in Walton's Life of Hooker. He prevailed upon the Queen to restrain the abuse, and she thenceforward took care to preserve the rights of the Church. And on the accession of James I., the last of the restraining statutes[2] referred to by Lord Coke pro-

[1] "And, for that long and unreasonable leases .... be the chiefest causes of the dilapidations and the decay of all spiritual livings and hospitality, and the utter impoverishing of all successors, incumbents in the same, be it enacted that from henceforth all leases by parson, vicar, or any other having any spiritual or ecclesiastical living, or any houses, lands, tithes ... other than for the term of one-and-twenty years, or three lives ... shall be utterly void and of none effect." 13 Eliz. c. 20.

[2] "An Act against the diminution of the archbishoprics and bishoprics, and for avoiding of dilapidation of the same," reciting that "all the archbishoprics and bishoprics in England, were in ancient times founded by .... kings of this realm, and, in respect thereof, his Majesty is lawful and rightful patron ...; and where also, by the laws and statutes of this realm, no archbishop or bishop can make any conveyance ... of any honours, castles,

hibited the alienation of the possession of bishoprics to the Crown for the future; the settling of which statute appears to have been a closing act of Archbishop Whitgift's holy life. These statutes, Sir, expressly forbid such alienation of Church property as the Tithe Act commands. And can you assert that any change of circumstances has occurred to justify such a change in legislation? What would have been the condition of this country, if this *fair* and *wise* measure, *as you call it*, had been placed on the Statute-book in the days of Elizabeth? Let me direct your attention to this question; and then, I think, you must acknowledge that I have reason for expostulating with you on the manner in which you speak of the Tithe Act.

You further rest your Protest against the Assessment Bill upon the decisions of Judges: applying which argument to the Tithe Act, I hope you will attach due value to the decision

manors, lands, tenements, or hereditaments, parcel of the possessions of his archbishopric or bishopric, ... to any subject, ... other than for term of one-and-twenty years or three lives, ... his most excellent Majesty... minding so to patronize and protect the said possessions from alienation or diminution, as that the same may, ACCORDING TO THE TRUE INTENT OF THE FOUNDERS, remain and continue in succession to the archbishops and bishops of this realm, and their successors, for the better maintenance of God's true religion, keeping of hospitality, and avoiding of dilapidations," prohibits and makes void all alienation of such possessions to the Crown for the future. 1 Jac. I. c. 3.

of Lord Chancellor Northington[1], showing that the law, in compositions for tithes, has always had regard to their future increasing value, which this Act has not. And, for the danger to be apprehended from a diminution of Church property, I would again refer you to Lord Coke. A layman, he observes (2 Rep. 446), is not capable of tithes at the common law, except in special cases. "*And the law hath great policy therein, for the decay of the revenues of men of Holy Church, in the end, will be the overthrow of the service of God and of his religion.*" There were two persecutions, he adds; one by Dioclesian, and the other by Julian the Apostate. The former slew all priests, but still religion flourished: for '*Sanguis Martyrum est Semen Ecclesiæ.*' "*But the persecution under the other was* "*more grievous and dangerous, because (as history* "*saith)* '*Ipse occidit Presbyterium,*' *for he robbed the* "*Church, and spoiled spiritual persons of their reve-* "*nues, and took all from them wherein they might* "*live; and thereupon in short time did follow great* "*ignorance of the true religion and service of God,* "*and thereby great decay of the Christian Profession;* "FOR NONE WILL APPLY THEMSELVES, OR THEIR "SONS OR ANY OTHER WHOM HE HATH IN CHARGE "TO THE STUDY OF DIVINITY, WHEN THEY SHALL "HAVE, AFTER LONG AND PAINFUL STUDY, NOTHING "TO LIVE UPON."

[1] Attorney-general *v.* Cholmly; Burn, Eccles. Law.

You say of the Assessment Bill, "I have examined all the pleas and arguments by which, as far as I have seen, it has been attempted to throw a garb of righteousness and equity over this proceeding, and have shown that they are delusive, and cannot effectually veil what it is in truth, an act of direct spoliation—the spoliation of a weak party, absent from the House of Commons, by a powerful party, present and active in it." (p. 62.) But are not these observations strictly applicable to the Tithe Act also? I am sorry that you should, in your turn, seek to "throw a garb of equity and righteousness over that proceeding," by calling it a "fair and wise measure."

Some persons have said, in reference to the Tithe Act, that it was wise for the Clergy to abate something of their rights, for social reasons; to conciliate good will, and exhibit disinterested conduct. But this view, you expressly tell us, should have no influence upon legislative enactments. "Admitting, it is said, that the Clergy will suffer to a certain extent—it is not decorous in them to complain and struggle on a point of mere secular interest. Now it is really difficult," you reply, "to be quite serious when we hear such arguments gravely used for such purposes as they are meant to effect in this case. Meekness, charity, the absence of worldly-mindedness, are excellent things to discourse on, and one cannot but wish that all mankind

should profit by such discourses, the Clergy among the rest; though I must really say that they do not appear to me to be the particular class in society which stand most in need of admonition on these heads. But what are we to think of such topics, when advanced to influence courts of justice, or *legislative bodies deciding on matters of property*. Let us imagine, if we can, a personification of Justice, with two parties contending before her for rights; can we believe her addressing one of them thus: You are, or ought to be, by profession and duty, meek, forbearing, kind, liberal, bountiful, out of proportion to your means, and therefore I am going to take something out of your pocket to-day, which I declared to belong to you yesterday, that I may make a present of it to your adversary, from whom no one pretends to exact any such virtues." (p. 62.) The same argument may be more strongly urged against the act for the commutation of tithes.

And here I must express my concern that you should ever have lost sight of those sound views of civil policy. Why will you tamper with the principles of the nobility and gentry of this country, by talking to them about a compromise, if they chance to *dislike* the law, thereby cherishing the fatal error that it should depend on their liking or dislike[1], and not solely on the principle of right

[1] "If instead of beginning with this deed of open violence, those who dislike the law declared by the courts of justice to be

or the real present and future interests of their country? Why will you not enforce upon the Clergy the paramount duty of contending for their rights, as inseparably connected with the future efficiency of the Church, and the future welfare of the nation? Many (the great majority I hope) of the laity, who are now busying themselves with schemes of commutation, are quite unconscious of the mischief which must result. They see no harm in appropriating to themselves what the present Clergy (who I maintain are trustees for the Church) may be willing to relinquish. And, in the teeth of your own principles, *you* countenance their delusion, by calling the Tithe Act a "*fair and wise measure.*"

The introduction and reception of Mr. Shaw Lefevre's Bill makes me wonder you should retain a favourable opinion of the Tithe Act. I should have been less surprised, if such had been your opinion when it passed; for many were inclined to think well of it as a salutary and healing measure, which would soften down animosities against the Church, of which tithes were the supposed cause. For my part, I was always convinced that the Tithe system was not in fault, but that the real evil was to be found in the error and avarice of human nature. I therefore asserted in my letter to Mr. Palmer, (which was written before I had heard of the As-

that of this realm, had sought, or would seek a reasonable and equitable modification," &c. (p. 63.)

sessment Bill) that the hopes of those who thought that they should remove all hostility to the Church by providing a substitute for Tithes, would prove delusive. I do not pretend to more than ordinary foresight, nor did the case require more. The issue has proved that my opinion was correct; but I candidly own that I did not expect so speedy a renewal of the attack upon the Church. I thought that her enemies would be satisfied for a time, and that they would at least remain content whilst they were gathering in the spoils, which an Act of Parliament had placed within their reach. The Assessment Bill is an early, and, therefore, as I cannot but think, a providential development of the principle of the Tithe Act; and I suspect, that, whatever are *your* opinions, many of the Clergy who once thought well of that Act,—(you, probably, have the means of knowing whether my suspicions are correct), will not join you in looking back upon it "*without a flutter of disquietude.*" Their disquietude will hardly be removed by the following extract from your Protest:—"Over a very large proportion of England the tithe has never been rated at all. Till lately this practice of omitting the tithe from the assessment prevailed more generally still; and when at length householders and others insisted that the tithe should appear in the rate book, the occupiers of the land very generally paid the tithe themselves, and had a direct interest in rating the tithe as low as possible.

In neither of these cases, was any serious discussion as to the principles of rating likely to arise; the rough and varying practice that prevailed has, in truth, no reference to any principle at all; *and the Clergy obviously had no interest whatever in interfering with the manner in which the vestry and parish officers made up their rate-books.*" (p. 31.)

Thus it seems, that under the old state of things, there were scarcely any disputes respecting rates between the clergyman and his parishioners. Now, however, your "*own table, as Ecclesiastical Tithe Commissioner, has been covered with letters from the Clergy, complaining that the conventions and usages on which tithe had ordinarily been rated, were broken up; that their position in the rate-book was worse than it had been. For the first time many of them were driven to consult works on the law of rating,*" and "*the country was on the point of being inundated with appeals.*" (p. 41.) Now, I would ask, did it never occur to you what was the immediate cause of this confusion? Did not the letters which you notice come from those of the Clergy, who were taking advantage, as they thought, of the provisions for a voluntary commutation of tithes? You have had no letters from me on this subject,—I have given you no trouble, nor have my parishioners given me any trouble; and this for the reasons stated in the extract from your Protest. If it be asked why "the country was on the point of being

inundated with appeals," I do not see what answer can be given, except that it arose from the Tithe Act.

Your commendation of this measure is scarcely a feather in the balance, when weighed against those arguments which you adduce against the Assessment Bill. I hope that the Clergy will adopt your warning voice, "to struggle stoutly to prevent their lawful rights from being violently taken from them, while their equitable claims are thrown aside and disregarded." (p. 9.) I hope that we shall temperately, but firmly claim the full enjoyment of those high privileges, which our pious ancestors bestowed in perpetuity on the British Church, and which our youthful Sovereign has solemnly sworn at God's altar that she will defend.

Your Protest against the Assessment Bill, and a document which lately issued from the Tithe Commissioners' Office with your signature, seem to refute the popular objections which have been urged against tithes. But I will first state, in the words of an eminent prelate, what these objections are. "No sooner, it was said, had the cultivator, by an increased outlay or a more judicious application of capital, augmented the produce of the land, than the tithe-owner stepped in 'to reap where he had not sown,' and claimed for himself a tenth part of the fruits of the skill and industry of another. The

poorer too the soil, the greater the hardship upon the cultivator; because a greater outlay was necessary to obtain the same amount of produce. The other objection applied exclusively to tithes in the hands of the Clergy; they placed, it was said, the interest of the Clergy in direct opposition to those of many of the members of their flocks, and thus gave occasion to jealousies and heart-burnings altogether destructive of the mutual harmony and good will which ought to exist between the minister of religion and the people committed to his care; and on the existence of which, the efficacy of his labours for their spiritual good must, in a great measure, depend. How, it was asked, could they be expected to listen with profit to his exhortations on the Lord's Day, when in the course of the preceding week, they had, perhaps, been engaged in an angry dispute with him about the amount of his temporal dues? If the ingenuity of man had been set to work to invent a plan for lowering the ministerial character, and injuring the cause of religion, a more effectual mode, it was contended, could scarcely have been devised, than one which thus rendered the Clergy continually liable to be brought into collision with their parishioners about their pecuniary interests. These were the two objections to the Tithe system chiefly insisted upon by its opponents. In both instances I believe the magnitude of the evil to have been greatly exaggerated: I believe that in conse-

quence of the general moderation of the Clergy in claiming their legal right, the cases in which they have failed in coming to an amicable arrangement with the tithe-payer, or in which the slightest impediment has been thrown in the way of agricultural improvements, have been very rare[1]."

Here let me bring forward some of your statements which confirm that view. You say that, "As far as the commutations have gone, the average compositions, with an addition of about two per cent, is what the Clergy have received for the resignation of their rights as tithe-owners. Now, this does not amount to two-thirds, I speak within very modest limits, of what the land-owners would have had to yield or pay, had the full rights of the Clergy been exercised: nor is this all nor the chief part of the advantages secured to the land-owners. *The income of the Church was increasing rapidly and must have increased largely.*" When writing on the Tithe Bill, I had occasion to remark: "In 1755 the population of Great Britain was 7,526,180 souls; in 1831, 16,539,318: that in seventy-five years it had considerably more than doubled the additional produce of agriculture—more than kept pace with the increasing population" (*and yet the Tithe system was a clog upon agriculture*). "The vegetable food consumed was raised in quality and changed, over

[1] Bishop of Lincoln's Charge at the Triennial Visitation, 1837.

a great part of the country, from inferior grains to wheat; the consumption of butchers' meat per head became greater" (*all this under the Tithe system*). "Importations from Ireland and elsewhere were greatly overbalanced, to the extent of five or six millions of quarters, by the corn grown as food for the additional horses kept."

"*The population,*" you continue, "*is at this moment increasing more rapidly than it did during those seventy-five years.* During every ten years the whole population is adding fifteen per cent to its numbers. During the ten years from 1831 to 1841 the addition will amount to 2,480,000. When this decennial period has been completed, an addition will have been made to the demand of the home market, equal to three times the demand of Wales; rather exceeding that of Scotland, greater than that of the Dutch United Provinces, or of the kingdom of Denmark. While such enormous additions are made to the home demand in so short a time, a constant stimulus to agriculture must necessarily be acting from year to year with a powerful and continuous effect. Now the yearly increase of production is answering so largely, that it has somewhat outstripped this gigantic increase of demand. The ports have been closed for some time, and the late low prices of home-grown corn, now apparently rising, were confessedly produced by a temporary repletion" (pp. 55, 56). I think, Sir, this statement confirms my

view that the Tithe system formed no real obstacle to the improvement of the soil; nor should it have occasioned jealousy that the income of the Clergy had a constant tendency to increase, while its increase was in proportion to the growth of population, which always brings with it an increase of their duties.

Other observations are suggested by the foregoing extract from your Protest. It is, I believe, a maxim of political economists, that population has a constant tendency to increase beyond the means of subsistence [1]. But hitherto, in this country, the supply has increased with the demand: and hitherto, I may observe, we have been honouring God with the tenth of our increase. Is the prevention of the evil in question to be exclusively ascribed to physical causes? It is well to guard against a spirit of presumptuously accounting for national judgments and national blessings; yet there is an opposite and perhaps more dangerous extreme, which we must be equally careful to avoid. A steadfast *practical* belief in the operation of an unseen Power, perpetually superintending the affairs of men, should, in the *Christian* parliament of a *Christian* nation, surely be an element of legislative wisdom. And I ask, without any disposition to look out for *signs and wonders*, may not our land have this year failed to bear its usual produce

[1] Malthus on Population, book I.

because the nation has desisted from honouring God with the tenth of her increase[1]?

But, granting that tithes do not check agricultural improvement, it is said to be a hardship upon landlords and tenants that the clergy should receive a tenth of the increased produce derived from the capital laid out on the land. But the landlord and tenant purchased or hired the land subject to tithe, and therefore paid so much less for it. And—*volenti non fit injuria*—they laid out much or little capital upon it *only of their own accord.* The real question, however, is not whether the Tithe system was without objection, but whether it had not counterbalancing advantages. Our population was constantly increasing, and the value of tithes was increasing with it. The Tithe system tended to provide adequate religious instruction for future generations; and those who rightly estimated this blessing, would not have complained of the alleged hardship.

It has been further said, that the Tithe system is unpopular. But so are taxes, so are rates; so are *rents*, and so will be *rent-charges.* Let me, however,

[1] See Prov. iii. 9, and Mal. iii. 8, 9. The question also was not whether we should for the first time erect the Tithe system, but whether we should maintain it after it had been established for a thousand years. "I am well aware," said Lord Melbourne in another matter, "that it is not the same thing to destroy, as never to have constituted, to demolish as never to have built up." (Lord Melbourne's speech as quoted by Sir James Graham at Carlisle, St. James's Chronicle, January 9, 1838.)

answer this objection in the words of Sir Robert Inglis, respecting Church Rates[1]. "I contend that they (church rates) form a portion of the estates of the Church, and that she holds them by a tenure which is older than that which secures the title of any other property whatever.... The first position which my honourable friend has taken, is on the popular dislike to church rates; but does not that resolve itself into this proposition, Resist the law, and it will be repealed? Unless we are prepared strictly to maintain the law, I will venture to say, that this principle will be carried out, until the next thing will be a demand to be relieved from the payment of rents upon the same ground (of conscientious scruple)." In this way we should have met the objection, that tithes were unpopular, but compromise and concession have been tried, and the experiment has proved a miserable failure. You must not commend the Tithe Act for *social* reasons: these must be abjured for ever. The Clergy, according to your statement, have WAIVED ONE-THIRD OF THEIR LEGAL DEMANDS; and the fruits of this surrender are anything but peace and security. The relinquished ground has only furnished room for another hostile manœuvre. Can the end which you propose, of "making the land-owner and clergyman not otherwise than pleased with each other,"

[1] Debate in the House of Commons, March 3 1837.—Mirror of Parliament, p. 442.

be attained by the course we are pursuing? We are tampering with property and principles; and changing everything but our own minds, which alone required to be changed. Thus we have aggravated the evil which we promised ourselves we should remove; for it is clear, that the Tithe Act is the immediate cause of those questions about rating, which have covered your table with letters from the Clergy, and, in the words of Mr. Phillpotts, "have roused a spirit of agitation which every true friend of the National Church must deprecate and deplore[1]." No decision of a court of law can settle those questions; for upon whatever principle the rent-charge be assessed, there will still be questions respecting the rating, which will lead to litigation. I sincerely hope that my predictions may prove false, but I fear that disputes between the clergyman and his parishioners about rates will henceforward be more numerous than they have ever been about tithes. Meanwhile the Clergy will not have the same opportunity which they enjoyed under the old system, of conciliating the good will of their parishioners, by abating their legal demands; which has always appeared to me a strong "social" objection to the Tithe Act.

If we would produce real and lasting harmony between the land-owner and the clergyman, a more laborious process is required than to pass an

[1] Letter to Lord John Russell, p. 29.

Act of Parliament. The Laity must bear in mind, that an efficient body of Clergy is a real blessing to the nation, and, like other things of value, cannot be maintained without some cost. The Clergy, disowning that *counterfeit* the voluntary system, must enforce, *with authority*, their right of reaping worldly things, where they sow spiritual things; they must constantly inculcate the duty incumbent upon all men of honouring God with their substance, as well as with their service. Such is the harmony and wisdom of the Divine counsels, that an act of duty and a testimony of *affection* towards God, is also a means to uphold and perpetuate his truth. The vine-dresser must live of the vineyard, the shepherd of the flock; "the labourer is worthy of his hire;" and "*so hath the Lord also ordained, that they who preach the Gospel should live of the Gospel*[1]." It was this principle that gave the Church her endowments; and only this principle can effectually secure them. That there should be a corresponding feeling on the part of the Clergy I readily concede[2]; the revenues of

[1] 1 Cor. ix. See in Common Prayer, Communion Service, Offertory.

[2] Such was the prayer of the pious George Herbert: "And seeing all my tythes and church dues are a deodate from thee, O my God; make me, O my God, so far to trust Thy promise, as to return them back to Thee."—Walton's Life of Herbert.

the Church ought not, I conceive, to be regarded as the private property of those who hold them; though to control their disposition accordingly, may be beyond the reach of human enactment. But these important principles have been kept in the back ground; the sacred nature of Church endowments has not been sufficiently considered; and we have been thinking too much of Acts of Parliament. Security has made us careless. We have allowed the popular objections against tithes to spread without refutation; and those objections have been adopted, not only by the covetous and worldly-minded, but by those also who might otherwise have imbibed very different sentiments. "I would know," says Hooker, "what nation in the world did ever honour God, and not think it a point of their duty to do Him honour with their very goods. So that this we may boldly set down as a principle clear in nature, an axiom that ought not to be called in question, a truth manifest and infallible, that men are eternally bound to honour God with their substance, in token of thankful acknowledgment that all they have is from Him. To honour Him with our worldly goods, not only by spending them in lawful manner, and by using them without offence, but also by alienating from ourselves some reasonable part or portion thereof, and by offering up the same to Him, as a sign that we gladly confess his sole and sovereign dominion over all, is a

duty which all men are bound unto, and a part of that very worship of God, which the law of God and nature itself requireth; so we are the rather to think all men no less strictly bound thereunto than to any other natural duty[1]." Thus far this profound, and learned, and pious author. But through false shame, or want of faith, or for some unworthy cause, we seem to be allowing this sacred duty to be expunged from our code of law. I know it is your anxious desire to remove our existing embarrassments. All who love the Church and their country, owe you a debt of gratitude for this; and, for myself, I cannot but be anxious to see you employing the energies of your powerful mind in upholding those important truths to which I have referred. It is only, I am persuaded, by a strict attention to these truths, that "the clergyman and the land-owner can be pleased with each other."

There is another evil too prevalent; our imperfect view of the design of those who furnished the Church with her endowments. When a school or professorship is founded, the foundation is obviously for the sake of education, or the advancement of science: the provision for the schoolmaster or professor being only a secondary concern, and subservient to the higher purpose. The principle appears the same in the case of the Church, though some of the Laity, in a generous and confiding spirit

[1] Eccles. Pol. b. v. p. 79.

(for which may we be ever grateful), speak of tithes "as the reserved nationality for the purposes of religion, or as endowments attached to the persons of the Clergy[1]." But the complete view of the question must be stated in another manner. "It is not the value of the benefice," to use the words of our zealous and able Diocesan, alluding to "the Act for restricting the holding of benefices in plurality, and for promoting the residence of the parochial Clergy"—"It is not the value of the benefice, as a saleable commodity, no, nor even as a provision for the incumbent, which is the *first* object to be looked to; but the pastoral care and instruction of those, for whose benefit the *whole* endowment was given[2]." This is obviously the constitutional view of the subject. For the glory of God and such national purposes the rights of the Clergy were given; and therefore are they specially secured

[1] "If we are asked," writes Mr. Gladstone, "wherein now consists, or by what signs is attended the nationality of the Church in England, we answer thus:"—"Sixteenthly," (after enumerating fifteen other signs,) "by the possession of the tithes, whether we consider them as (to use the phrase of Mr. Coleridge), the reserved nationality for the purposes of religion, or as endowments attached to the persons of the Clergy."—The State in its relations with the Church, by W. E. Gladstone, Esq. M.P., chap. vii. sect. 4.

[2] Charge to the Clergy of the Diocese of London at the Visitation, 1838, by Charles James, Lord Bishop of London, p. 11. (Fellowes, London).

by the coronation oath of the Sovereign [1]. But if so, how miserably defective must be our present system of legislating in Church matters, when a minister of the crown, (acting, I cheerfully admit, under a considerate feeling) rests his defence of a measure on the ground of its being *harmless to the existing Clergy;* saying, "that no proposition had emanated "from them (the ministry), which would go to de- "prive the Church of the property which it has "hitherto enjoyed; no matter to whom it belonged, "from the hierarchy down to the lowest curate of "the land [2]." What then becomes of the principle, that the Clergy are trustees for the Church. If the Noble Lord's justification be sufficient, the rights of the churches and the people are gone.

I proceed to make some observations upon a Report which lately issued from your office. This asserts that the commutation has hitherto proceeded with less irritation and opposition than might

[1] *Archbishop or Bishop.* "Will you to the utmost of your power maintain the laws of God, the true profession of the Gospel, and the Protestant reformed religion established by the law? And will you preserve unto the Bishops and Clergy of this realm, and to the CHURCHES committed to their charge, all such rights and privileges, as by law do or shall appertain unto them, or any of them?" *King or Queen.* "All this I promise to do."—See Blackstone's Commentaries, book I. chap. vi.

[2] Speech of Lord John Russell (Times Newspaper, May 4, 1838). The same argument was used by him in the discussion of the Ecclesiastical Duties and Revenue Bill Feb. 25, 1839.

have been expected. How is this to be reconciled with the picture of uneasiness and discomfort, which you describe in your Protest, and which must be taken into account, if we are to form a comprehensive and impartial view of the whole subject? Again I perceive, by certain symptoms in this Report, that the Tithe Act is not a very popular or practical measure. Endeavouring to account why so little has been done, without adverting to the true cause, you call upon the people to give their full attention to the business; and at the same time insinuate, that some pressure from without may be necessary, to set the machine in motion, or accelerate its progress. It thus appears that the voluntary commutation is insufficient, and that compulsion must be used. And here I enter my protest against this hasty and violent proceeding. In legislating upon copyholds, long time is taken that the rights of lord and copyholder may be fairly adjusted; but one session was deemed sufficient to dissolve the clergyman's title of a thousand years; he is invited to be accessary to this spoliation of the Church; and compulsion crowns the work. The Tithe Act must be respected, as law, until it is repealed; yet I cannot but regard it as hastily passed in a moment of excitement, without due regard to the principles of the Constitution, or to the proper relations of Church and State. "This measure," you say of the Assessment Bill, as I would

say of the Tithe Act, "is clearly before us with titles to deference very different from those which would surround an Act founded on a fair and deliberate examination of the subject..... If the owners of property, who see in our legislative bodies powerful and active parties with opposite interests to theirs, are to be treated in *this new and rough manner*, the power of our popular assemblies will soon become a source of uneasiness and dismay, not of confidence and protection." (p. 50.)

The following statement, which comes from the rector of one of the parishes to which it refers, will show that the evil of which I am complaining is not imaginary. "W——— is a rectory in Northamptonshire. On the 20th of January, 1748, an Act passed for confirming an agreement made for the payment of an annuity or yearly rent charge of 100*l.* in lieu of the tithes, and 60 acres of glebe land in this parish, and also for a like payment in another parish, W———, about eight or nine miles distant. It appears that when the Act passed, the arrangement was fair and beneficial to the then incumbents; and it was supposed, but *most erroneously*, that it would be so to their successors. The Act recites 'that the yearly value or income of the said sixty acres of glebe land, and of all the tithes of the said parish of W———, did not, nor could, (one year with another) amount to more than the sum of £84:" And again, 'it would be greatly to the advantage

and benefit of the present incumbents and their respective successors .... to have and receive in lieu and exchange of and for the glebe and tithes, a yearly rent or annuity in money .... by reason of which exchange, the income of the said rectories would be considerably increased" .... and not only "that the carrying the said agreement into execution will be very beneficial to the present and future rectors of the said several parish churches of W——— and W———, and be an improvement of the revenue of the said rectories and churches' but also that it would be '*a manifest advantage to all the parties.*' And therefore it settled 100*l.* a year upon each rector and his successors in lieu of the glebe and tithes, and this stipend is all which each living now yields.

"But what would have been the present yearly value of the living of W———, if this commutation had not been made ?

"The tithes of 1200 acres of arable and grass land (exclusive of glebe), at 6s. per acre, are worth	£360	0	0
Do. of 450 or 500 acres of wood lands, comparing their recent valuation with that of the arable and grass lands ..	50	0	0
Sixty acres of glebe at 25*s.* per acre .	75	0	0
Yearly value of the living	£485	0	0"

Or the whole living would have been worth nearly five times its present value. "I have no doubt," my

informant adds, "that there is a similar disproportion in the other parish between the money payment and the actual value of the tithes and glebe."

Now I cheerfully admit that the recent Act provides for the commutation of tithes upon terms more favourable to the Clergy. It gives the Clergyman the advantage of any increase in the price of grain, and, instead of taking away the glebe, it permits (for the redemption of the tithe-rent) twenty acres to be added to it. But what would have been the result had the principle of the Tithe Act been adopted in the above-mentioned case.

Supposing the rent of the glebe in 1748 to have been but 5*s.* the acre, and setting the composition accordingly, we have 85*l.* as the composition for tithes at that time. Fixing then the commutation rent upon the principle of the Tithe Act, according to the average prices of the seven years preceding 1748 [1], we have 85*l.* divided into three equal parts,

[1] According to Macpherson's Annals of Commerce, Appendix, No. 3, the average prices were as follows:

YEAR.	WHEAT PER QR.	BARLEY DO.	OATS DO.
1741.....	£1 17 6.....	———	———
1742.....	1 7 6.....	0 17 6.....	0 13 6
1743.....	1 1 6.....	0 17 6.....	0 14 6
1744.....	1 0 0.....	0 12 0.....	0 10 6
1745.....	0 19 0.....	0 13 6.....	0 14 0
1746.....	1 0 0.....	0 11 0.....	0 13 0
1747.....	1 8 6.....	0 10 0.....	0 6 9

This will make the average of wheat, £1. 4*s.* 10¼*d.*; barley, 14*s.* 1¼*d.*; and oats about 12*s.* 3*d.* The price of barley and

purchasing about 22¾ qrs. of wheat, 40 qrs. of barley, and 46 qrs. of oats, which being again converted into money according to the average prices at which the conversion is now to be made, as fixed by statute 1 Vict. c. 69 [1], yield but 178*l.* or less than half the present value of the tithes. And if to this sum be added 75*l.* as the present rent of the glebe, which the Tithe Act would have left untouched, the whole would have been little more than half of what the living would have been worth had there been no commutation. Nor is there any peculiarity in the circumstances of that living, unless that 60 acres is above the average extent of glebes. If therefore the Tithe Act had passed in 1748, instead of 1836, *and continued unrepealed*, we may see what great injury the property of the Church would have sustained. Thus, when one century from the present time shall have elapsed, (to say nothing of intermediate mischiefs), the Church may have been stripped of one half of her present revenues.

Such appears to be the real state of the case; and I respectfully submit that neither Clergy nor Laity should take any part in this commutation without protest or remonstrance. Perhaps they fear it will be cast in their teeth, that they have already commenced this work, or that they have suffered the

Oats not being stated for 1741, I have reckoned it for that year at the price of the succeeding year.

[1] Wheat 7*s.* 0¼*d.* the bushel; barley, 3*s.* 11½*d.* the bushel; oats, 2*s.* 9*d.* the bushel.

Bill to pass into a law without opposition; but those who now use this argument will be the first to deny its force, when they feel the difficulties which the Tithe Act introduces in the transfer of property. The rights of the Clergy are sacred by the principles of our Constitution; they are carefully guarded in the Coronation oath of the Sovereign; and I cannot but think that even now they must be respected, be they few or many who are determined never to surrender them. Let it be remembered that our private interest is not the chief thing at stake; but that, as trustees for the Church and guarding the interests of our parishes, we call upon the British Legislature to redress this public wrong. If the nation were determined to rob the Church, there might be reason for despair: but whenever any measure injurious to the Church has been fully discussed by the public, it has almost invariably been amended or abandoned. An apparent victory may have been obtained by our opponents; but always ended in their virtual defeat. The Tithe Act passed almost *sub silentio;* why then should not the Legislature reconsider a measure fraught[1] with evil to Church and State, when it often alters a law which

[1] Those who consider the question relating to the Church property settled by the Tithe Act, are referred to the following warning: "It is a fact worthy of notice, that the records of history present few or no instances, in which the spoliation of property, devoted to literary or ecclesiastical purposes, has not

presses on private interests. If an individual sees that he has done wrong, will he not repair that wrong; and shall the legislature of this great nation be less just than an individual? *Is the decision of a judge relating to a question of assessment to be reconsidered?* And cannot the High Court of Parliament retrace its steps in a question of such vital importance? *Optima portus pœnitenti mutatio consilii est.* The Church has nothing to fear, except from those who see the evil, and, without protest or remonstrance, say it is too late to remove it.

"What," said Mr. Goulburn, "would have been now the condition of the country, if in the times of Henry and Elizabeth the government, in the enactments with reference to Church property, had said, We are friends to the Church—we limit its income: but think not we are its enemies, because we seek to prevent the improvement of the revenues of that Church; we will give to the Church all that it now possesses, we will secure it to the Church for ever. The policy of the noble Lord would go to deprive whole districts, cities, towns, and counties, throughout Great Britain, of adequate funds for the religious instruction of the people. If such had been

failed, *first, to accomplish the benefit which was avowed as the cause of interference with it; and secondly, to be stayed within the limits contemplated by those who advised it.*"—Dr. Hawk's Eccl. Hist. of Virginia, as quoted in the British Critic, No. 40. p. 284.

the course at the time of which the noble Lord had spoken, instead of being the best conducted, this country would have held a very different station among the nations of the earth, and would have been bowed down in a state of wickedness and weakness, arising from the absence of a fit religious instruction of its people[1]." Where are we to find a stronger condemnation of the Tithe Act; or a more convincing proof that its real bearing was not sufficiently considered by those members of the legislature, whom you describe as having a right to speak in the name of the Church. The sentiments which I have quoted were expressed by an individual, but they are held by the most influential party in the House of Commons, and who are pledged by their principles to preserve the rights of the Church inviolate. It was to this subject also that Lord Stanley directed attention, when he used those memorable and statesmanlike words, NEVER FOR ANY CAUSE OR ON ANY OCCASION AFFIRM A PRINCIPLE WHICH YOU DO NOT BELIEVE, OR REFUSE TO AFFIRM A PRINCIPLE IN WHICH YOU DO BELIEVE[2]. Viewing the speech of Mr. Goulburn, in connection with those words of the noble Lord, which were responded to when uttered, by three hundred members of the legislature, I have yet to learn that this public wrong is irreparable.

[1] Times Newspaper, May 4th, 1838.

[2] Speech at Merchant Tailors' Hall, May 12, 1838.

Having directed your attention to this virtual condemnation of the Tithe Act, pronounced by the most influential party in the legislature, let me produce testimony that it is not in accordance with the feelings of the people. At a meeting held at Chelmsford, in March 1837, convened exclusively by the laity to consider the question of Church rates, and most numerously attended by persons of all ranks; after many able speeches, upholding the rights of the Church, Sir Brook Brydges thus expressed himself; "*It has always been my boast and pride, that before I can spend a single farthing which I receive from the land, a portion of these receipts has gone to the honour of my God. I will say that if we, as a nation, or as individuals, whether as persons dissenting from the establishment, or as belonging to the establishment, do not endeavour to deserve that blessing which I read in my Bible, is promised to those who honour God with their substance, and give to his service the first fruits of their increase*[1], *we may expect to receive from Him a curse instead of a blessing*[2]." I was myself a witness to the enthusiastic reception of these words by the assembled multitude. And why, I ask, may not this spark be fanned into a flame? Why should we despair of our cause? Why distrust our countrymen? Why not indulge the fond hope that the feeling which I have proved to

[1] Prov. iii. 9. Mal. iii. 8, 9.

[2] Essex Herald April 4, 1837.

exist, may gather strength, and ripen into a general principle of repentant action?

Other evidences are not wanting to show that the spoliation principle of the Tithe Act is not that of the people at large. In almost every diocese we see numerous and influential bodies of men, not seeking to deprive the Church of her revenues, but showing anxiety to increase them. For this purpose meetings are held, societies are formed, and curates' funds established. Surely this anomalous state of things cannot last; the real bearing of the Tithe Act must ere long be discovered, and men will be ashamed of the inconsistency of providing fresh churches and curates with the one hand, and robbing those in existence with the other.

"The population," you say, "is increasing fast: the national wants which that fund is to satisfy are increasing with the population; every circumstance which tends to shrivel and diminish such a fund, increases the probability that the time is at hand when it may become inadequate to the wants of the multiplied people (p. 64.)." I entirely agree with you; and I would call your attention to the peculiarly mischievous effects of the Tithe Act in populous districts. In my parish, with a scattered population of 2000 inhabitants, there is one church and one chapel, and another chapel (which I hope will shortly be built) is required; the whole actual income, including the endowment of the chapel,

amounting to about 430*l.* per annum. The living is a Vicarage; and, from the present system of cultivating land, is probably rather increasing in value. Nor is there anything singular in the circumstances of my living; in the neighbourhood there are two other parishes, where additional clergymen are required, while the value of the livings is not sufficient to support them. There are others, in the same condition, near a place with which you are connected, and many will be discovered in the Parliamentary Returns of benefices. But what principle can sanction the alienation of any Church property, where it is already so insufficient for the proper service of the Church?

"I have never had a scruple," said the Bishop of London, at a late meeting at Chelmsford, of the Essex Association for building and enlarging churches and chapels. — "I have never had a scruple of asserting, fearlessly, that it is the sacred duty of the government of every Christian country, to preserve and propagate Christianity; it is their duty to provide the people with the means of public worship, edification, and grace. This formerly was specifically acknowledged by the Legislature; of late years it has been contested, but, I believe that the *sense of the people is so strongly expressed in favour of my doctrine*, that I am not without hope, before long, a fresh recognition of the principle may be looked for at the hands of govern-

ment. That it will be an effective recognition at once, I do not believe, but I shall be satisfied if it is a distinct recognition; but whether it be as full as we desire, or a bare admission of the principle, we must, to insure it, do all in our power to satisfy the Legislature that we are in earnest in demanding it[1]." Nor has the Bishop miscalculated the feelings of the people. A numerous meeting, attended by fifteen members of Parliament, was recently held in London, on the subject of national education and Church extension. The principle which you have yourself recognised, that the general government is bound to find a fund for the religious instruction of the people, was strongly enforced at this meeting; the first resolution declaring "that the meeting was deeply convinced that one leading cause of the existing deficiency in the means of education, is to be found in the neglect by the Legislature, of making the Church Establishment co-extensive with the growing numbers of the people, and of adjusting the parochial system thereto; that for this reason, but much more for others of a still *higher* and *holier* obligation, this meeting calls upon the Legislature to resume the discharge of that great duty, which, at no remote period, it partially acknowledged, *by annual grants of money, for the improvement of small livings*, and by voting sums for

[1] Essex Standard, October 19, 1838.

the erection of new Churches." Lord Sandon, in speaking to this resolution, is reported [1] to have laid down the following propositions: "First, That the Clergy are wholly identified with the national education: Secondly, that the deficiencies of the Church should be supplied by the State, and that the number of Church endowments should be aided by the State, as well as by individuals connected with the Church herself." The meeting unanimously agreed that a petition, embodying these principles, should be presented to the House of Commons by Lord Ashley and Lord Sandon; and the other honourable members present were requested to support it. But, if it is the duty of the Legislature to provide additional means for the spiritual instruction of the people, much more is the Legislature bound to preserve such means as are already in existence; and if the sense of the people is so strongly expressed in favour of the doctrine laid down by our Bishop, it will be so for the repeal or amendment of the Tithe Act, when the merits of the case are understood. If the Legislature will listen to an earnest demand in the one case, it will not surely be deaf to earnest and respectful petitions in the other. We ask for no grant of public money; we only petition that the property which has been appropriated, *and is required*, for the spiritual instruction

[1] St. James's Chronicle, February 12, 1839.

of the people, may not be made over to the landholders, who, we believe, do not desire it. Let the people of England beware how they violate charters by which that property has been consecrated to God. "We have given to God both for us and for our heirs for ever," is the language of many of those grants; and the same words *stand foremost* in the great Charter of our civil liberties[1]. Let the pious will of our forefathers be religiously fulfilled. The endowments of the Church were not designed for one age, but in perpetuity for the service of Religion. Why should they be divested of their permanent and substantial character[2]? To those who acknowledge the rights of property, and respect the privileges of their fellow citizens, we appeal upon the ground of justice, and the principles of the Constitution. To those who acknowledge that Church property is sacred, we appeal in the language of a Father of our Church, "Why should we presume to deal with God, worse than God hath allowed any man to deal with us....The time it may be will come, when they that either violently

[1] "First we have given to God and by this our present Charter have confirmed for us, and our heirs for ever, that the Church of England shall be free, and shall have all her whole rights and liberties inviolable"—Magna Charta, 9 Hen. III.

[2] "They have ordained that the provisions of this establishment should be stable as the earth on which it stands, and should not fluctuate with the Euripus of funds and actions."—*Burke, Reflections on the Revolution in France.*

have spoiled, or thus smoothly have defrauded God, shall find they did but deceive themselves. In the meanwhile, THERE WILL BE ALWAYS SOME SKILFUL PERSONS, WHICH CAN TEACH A WAY HOW TO GRIND TREATABLY THE CHURCH WITH JAWS THAT SHALL SCARCE MOVE; AND YET DEVOUR IN THE END MORE THAN THEY THAT COME RAVENING WITH OPEN MOUTH, AS IF THEY WOULD WORRY THE WHOLE IN AN INSTANT [1]."

In the recent debate on the Ecclesiastical Revenues Bill [2], Lord John Russell, on the strength of the two per cent addition of which you speak, asserted that the Tithe Act had improved the incomes of the clergy; forgetting that this small and temporary addition, which they might have obtained without the Act but for their own moderation, has been counter-balanced by the permanent decrease of their property to a much greater extent. He informs us that the Tithe Commissioners have confirmed 2190 agreements, but makes no mention of the numerous cases in which the business has been here suspended [3]. Had he considered with Mr. Phillpotts, the "*spirit of agitation which every*

[1] Hooker, Ecc. Pol. V. 7. and 79.

[2] House of Commons, Feb. 25, 1839.

[3] It appears by a return laid before the House of Commons, dated 20th February, 1839, that the work of commutation had commenced, by notice of meetings, in 8454 cases, and been completed, by confirmation of the apportionments, in but 239 cases!

friend of the National Church must deplore ;" or seen your "*table covered with the complaints of the Clergy,*" he would hardly have asserted that the Clergy were under the Tithe Act, "receiving a certain income without dispute." He condemns the Tithe system because it yielded an uncertain income; forgetting the advantage of the clergyman's sharing with his parishioners the good or evil of an abundant or scanty crop. "It caused," he says, "their stipends to be less according to the kindness and indulgence of the incumbents in remitting their tithes; and it caused their incomes to rise, according to the strictness with which other incumbents exacted their rights." And does he not know that the tithe rent, being fixed according to the last seven years' composition, will be high or low, according as the incumbents have been liberal or strict? Thus that temporary evil of the Tithe system is made perpetual by the Commutation; while the clergyman will no longer have the same opportunity of gaining the good will of his parishioners by his liberality.

In the same debate, Sir Robert Peel observed, that he "should give to any project for the diversion of one single shilling of Church property to any other than strictly spiritual and ecclesiastical purposes, his most decided opposition." How then can he approve of the commutation which allows nothing for the future increase of tithes? The Right Hon. Bart. enforced the necessity of providing

additional incomes for the poorer livings, there being 3528 benefices with less than 150*l.* a year. How then can he approve of the commutation by which the improvement of these livings is prevented[1]? I would here suggest that, if the Tithe Act must be retained on our Statute Book, it might be provided, according to the principle of Mr. Goulburn's Act for compositions for tithes in Ireland, (4 Geo. IV. c. 99.) that there should be a new commutation every twenty-one years at the desire of either party; being in every case according to the actual value of the tithes at the time. There is much to learn from the caution of that Act, though more, perhaps, from its result. For my part, I fear that those who cannot be reconciled to Tithes will very soon object to the existence of an Established Church. No permanent good can be expected to result, when we sacrifice the just interests of future generations in seeking peace for ourselves; "making a feast for the present age, and a famine for posterity[2]."

[1] See the case of the living of W——, *ante*, p. 36.

[2] "The History of Waltham Church," says Fuller, is the Church History of England," and the following extract from his account of Waltham illustrates his meaning: "Anno 1563. For an old house in the market-place, 13*l.* 6*s.* 8*d.* This tenement, low-rented, yielded annually nine shillings. Now the parish sold it (and another house in West Street), outright, letting leases also of their other Church lands for twenty-one years. SUCH BARGAINS MADE A FEAST FOR THE PRESENT AGE, AND A FAMINE FOR POSTERITY."

In conclusion, I may state, that with my strong convictions, not formed hastily, respecting the unjust and irreligious principle, and ruinous tendency of the Tithe Act, I doubt whether I ought not, as a duty which I owe to myself, to my successor, to my parish, and to my country, to carry my opposition of it to the utmost extent. I have petitioned Parliament that my parish may be exempted from its operation during my incumbency; and I trust that my case will receive that kind consideration from the legislature, which I feel assured it will meet with at your hands.

I remain, Reverend Sir,

Your faithful and obedient Servant,

CHARLES MILLER.

Harlow Vicarage,
March 8, 1839.

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A LETTER

TO THE

RIGHT HON. LORD J. RUSSELL,

IN ANSWER TO THE PAMPHLET OF THE

REV. RICHARD JONES,

ONE OF THE TITHE COMMISSIONERS FOR ENGLAND AND WALES,

ON THE MANNER IN WHICH

TITHE SHOULD BE ASSESSED TO THE POOR RATE.

BY JOHN PHILLPOTTS, ESQ.

BARRISTER AT LAW, AND ONE OF THE REPRESENTATIVES IN PARLIAMENT FOR THE CITY OF GLOUCESTER.

LONDON:

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1838.

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A LETTER, &c.

My Lord,

As the Bill introduced by Mr. Shaw Lefevre, in the last session of Parliament, for regulating parochial assessments, was withdrawn before it had received the final sanction of either branch of the Legislature, and as great exertions were made, at the close of that session, to give circulation to a pamphlet of the Reverend Richard Jones, one of the Tithe Commissioners, protesting against the principle of that Bill, and denouncing its authors, as hostile to the legal rights of the Church; it seems due to those, who differ from that reverend gentleman, to investigate the statements on which he mainly relies; in order to discover whether or not the supporters of the Bill in question are deserving of the censure, which is so unceremoniously heaped upon them, in the pamphlet alluded to.

The principle involved in this discussion, is one of great importance. It is not confined to Ecclesiastical Tithes; to which alone the reverend gentleman professes to apply his arguments; but it unavoidably extends to the mode of assessment of all properties, real and personal, corporeal and incorporeal, for the relief of the poor. The reverend gentleman boldly assumes that the rights, for which he contends, are founded on the Act of Elizabeth, "as interpreted by a long chain of decisions, which, amidst all the changes of practice, have kept alive the spirit of that Act;" and he confidently relies "on the equity as well as the legal strength of his case." The question at issue then is a dry question of law. It ought to be argued on strictly legal principles alone; and no consideration of supposed hardship, or commiseration, should be mixed up in the discussion. I give the reverend gentleman full credit for his sincere conviction that the claims, for which he contends, are warranted by law. I claim equal credit for those who assume the contrary position—and though, in the pamphlet alluded to, the reverend gentleman has not hesitated to charge the authors of the Bill in question with an unjust attempt, by *artifices* and *manœuvres*, to perpetrate an act of cruelty and wrong, for their own benefit; I will not follow his example, by imputing to him, and to those

who espouse his cause, the charge of *unjustly* urging claims, for which, I verily believe, neither the Act to which he refers, nor the decided cases, when carefully considered, can afford the slightest pretence.

It is not my intention to follow the reverend gentleman through the various discursive observations in which he has indulged. Whether the provision for the Church be adequate or not—whether the various changes, which have been gradually adopted, in the mode of assessment for the relief of the poor, have operated beneficially, or otherwise, for the Clergy—whether the protecting corn duties have or have not enhanced materially the value of tithes, by raising the price of corn to consumers, on account of charges, to which the growers of corn are liable, but which did not affect the owners of tithes—or whether, in the arrangement for the commutation of tithes, the interests of the Church have, or have not, been sufficiently attended to,—are not the questions for discussion. The only point to be determined, on the present occasion, is, whether, by the provisions of the statute of Elizabeth, and the decided cases, the Clergy, in respect of their tithe, are entitled to be assessed on a principle more favourable than the occupiers of farms. If they be, it is unjust to deprive them of that ad-

vantage—if they be not so legally entitled, the claim ought to be abandoned.

In discussing the question, I agree with the reverend gentleman that it ought to be treated, independently of the enactments of Mr. Poulet Scrope's Act; and that, under the proviso in that Act, the Clergy are entitled to claim the same beneficial allowances, if any there be, to which they were entitled prior to the passing of that Act.

But, before I enter upon the main topic of the reverend gentleman's pamphlet, it will be necessary to dispose of, what he deems, "a great preliminary hardship," inflicted on the Clergy; by not allowing them a deduction, from the assessment in respect of their tithes, for the amount of the value of their professional duties, on their respective benefices. By refusing this deduction, he contends that the Clergy are virtually charged for income, derived from their personal labour; though the profits of personal labour, in all other professions and callings, are exempt—a hardship, the removal of which is so favourite an object with him, that he confesses he should fight the battle, on the allowances, for which he contends, but faintly, if a remedy could be provided for, what he calls, the injustice inflicted, by taxing this peculiar species of professional charges alone. He admits, however, that on this point

there is an express decision of a court of law against him ;—but he still claims a compromise !

Now if an assessment were made on the Clergy, in respect of their surplice fees, their salaries, or uncertain emoluments, while the members of other professions and callings are held not liable to be assessed on account of their salaries and profits, there might be ground for the reverend gentleman's complaint ; but as I believe there is not one instance of a clergyman having been assessed, on account of his surplice fees, his salary, or uncertain emoluments, the appearance of injustice, which the reverend gentleman assumes, will vanish on a simple consideration of facts. The right of the Clergy, to their glebe and tithes, is quite distinct from their claim to surplice fees, salaries, and casual emoluments. To the glebe and tithes the incumbent becomes entitled by reason of induction to his benefice ; to which certain *official duties* are incident, and without which the benefice could not exist. The surplice fees, salaries, and voluntary offerings, are fees for the performance of religious services. In respect of the former (*i. e.* the glebe and tithes) the Clergy, as occupiers, are liable to assessment,—in respect of the latter, (*i. e.* the fees and casual emoluments,) they are exempt. So in other professions and callings—the ranger of a park—the officers of a hospital—the butler of a

college—the warden of a prison—and the various judicial officers, and officers of state, enjoying as such official residences or lands, become entitled to those residences and lands by virtue of their respective offices; to which offices certain duties are attached—the fees or salaries which they receive are for the performances of services. In respect of the former they are liable to assessment—in respect of the latter they are exempt. If, as the reverend gentleman contends, the clergyman, who is assessed for glebe and tithes, to which he becomes entitled in right of his benefice, were allowed a deduction on account of the value of the duties which he is bound to perform *by reason of his office*—would not the ranger of a park—the officers of a hospital—the butler of a college—the warden of a prison—and all judicial officers, and officers of state, occupying *official* residences, be equally entitled to a deduction from their assessments, for the value of the official services which they are bound to perform? Now in the whole series of cases I do not find one in which such a claim has ever been attempted to be established, by clergyman or layman, except in the case of K. *v.* Joddrell; and in that case the claim was expressly disallowed. Yet against this authority, to which he professes to bow, and in opposition to all the arguments arising from analogy to similar cases,

the reverend gentleman hesitates not to assert that " the Act of Elizabeth, consistently interpreted, between the Clergy and the other professions, would have given them, from the beginning, the right of deducting the mere wages of professional duties personally performed." And he demands a remedy for, what he is pleased to designate, " the injustice in all cases, the cruel hardships, and oppression in some, which are inflicted by taxing this peculiar species of professional wages alone;" and if this demand be not conceded, he, in a spirit of defiance, urges that " the Clergy must struggle stoutly to prevent their lawful rights from being violently taken from them, while their equitable claims are thrown aside and disregarded."

Whether the lawful rights of the Clergy are attempted to be taken from them, or their equitable claims invaded, by the Bill introduced in the last session of Parliament, is the question to be discussed. The object, proposed by that Bill, was to declare that the occupiers of all hereditaments, without distinction, should be assessed to the full amount for which such hereditaments would let to a tenant, without addition on account of supposed profits of occupiers. The claim of the reverend gentleman, on behalf of the Clergy, is, that in addition to the full amount for which a farm would let, the farmer should be assessed

for the amount of profits, which he may be *supposed to make*, beyond his rent, or that the occupiers of tithe should be assessed at so much less than the net annual value of their tithe as is equal to the proportion of the farmer's *supposed* profits. The reverend author professes to found this claim "on the statute of Elizabeth, as interpreted by the long chain of decisions, which, amidst all the changes of practice, have kept alive the spirit of that Act." He confidently refers to Mr. Nolan's Treatise on the Poor Laws, for the exposition of the principle for which he contends; and he exultingly relies on the case of K. *v.* Joddrell, as completely setting the point at rest.

Now, as the question at issue must depend on the construction of the statute of Elizabeth, it will be right, in the first place, to examine the words of that statute, so far as the same relates to the making the assessment for the relief of the poor. The statute enacts that the churchwardens and overseers shall raise, weekly or otherwise, competent sums for the purposes enumerated, by taxation "of every inhabitant, parson, vicar, and others; and of every occupier of lands, houses, tithes appropriate, appropriation of tithes, coal-mines, or saleable underwoods in the parish, to be gathered out of the same parish, according to the ability of the parish."

Under the authority of this enactment alone, the assessments for the relief of the poor can be made—and there are only two classes of persons whom the parochial officers are empowered to tax, viz. 1st. Inhabitants, parsons, vicars, and others. 2nd. Occupiers of lands, houses, &c., in the parish, according to the ability of the parish.

The reverend gentleman broadly asserts that the principle, for which he contends, is fully established by this statute, and by a long series of cases arising under it; but he has not thought fit to refer to any one case, prior to that of K. *v.* Joddrell, in which such a principle has been even attempted to be maintained; except, indeed, the case of K. *v.* Brown, in which the judgment, as delivered by Lord Ellenborough, so far from supporting the doctrine contended for, seems rather to lead to the contrary conclusion. The simple question in that case, as stated by the Chief Justice, was, whether, when a farmer was rated for the whole farm in his occupation, the profits of which arose principally from stock grazed upon it, a part of those profits should be again subjected to a rate, in the hands of a dairyman, to whom the farmer had let some of his cows. On this point the judgment of the court was against the liability (that is, against taxing the profits) of the dairyman; the court

considering that the farmer, being assessed for the whole farm, must be presumed to be rated for all the profits of it. The learned Judge, it is true, afterwards adds, that if a farmer made profits by feeding cattle on oilcake (not being the produce of the farm) he would be liable to be charged in respect of such profits. But this is a mere *obiter dictum*, not arising out of the question then before the court; and even the reverend gentleman himself admits that the practice "never has been, and assuredly never will be, carried so far as this." In fact, such a proposition could only be sustained by treating such a charge on the farmer as an assessment for profits, arising from his personal estate, and not from the occupation of his farm. Whether the other decided cases, which the reverend gentleman has not cited, will be more favourable to him or not, will be better discussed when we consider the case of K. *v.* Joddrell.

But though the reverend gentleman has satisfied himself with a general reference to decided cases, without entering into an enumeration of them, he has thought fit to refer particularly to Mr. Nolan's Treatise on the Poor Laws, as fully supporting him in the view which he takes of the subject. Now the treatise of Mr. Nolan has undoubtedly been received as a text-book of considerable authority — and where the principles

therein laid down appear to be supported by adjudged cases, they are entitled to implicit respect; but when the learned author has thought fit to submit propositions, in support of which no decided case is referred to, such propositions are not to be received, as admitted axioms, but merely as the individual opinion of an eminent lawyer. Under this latter description many of the propositions suggested by that learned author, in the treatise referred to, must be ranked. In the commencement of the chapter entitled "Of rating double," it is stated that "the assessment is to be levied on the occupier *according to the total profit*, every person who has an interest therein paying his proportion of the tax, so that the occupier is the receiver of the whole produce, who, after defraying all charges, distributes a fixed share of the net profits to those under whom he holds, and retains the remainder in remuneration of his trouble." Now in support of this proposition, however fanciful and ingenious it may be, no case is referred to—and I believe that no authority can be adduced. I advert to it, not admitting its accuracy, but because it contains the principle, on which Mr. Nolan seems afterwards to rely, in chapter 12, where he treats "On the principles upon, and proportions in which, the rate is to be made." The learned author commences that chapter with a statement that "the sums raised for the poor's

relief should be assessed upon *the productive value of all property* occupied in the district for which the rate is made." At p. 225 he states, that "the assumption that rack-rent is the criterion of that actual value upon which the tax is laid, is fallacious,—rent being only so much of the actual value as the tenant can afford to pay his landlord, deducting the expense of cultivation, and a reasonable remuneration for trouble and time. The rent, therefore, is the *landlord's profit* —the reasonable remuneration is *the tenant's profit. Both come from the land,* and form part of its productive value." "Deductions for expenses of labour and capital, necessary to render the subject productive, should be considered, in both cases, as drawbacks upon the profit." And he adds, "The *net profit*, whether it goes to the landlord in the name of rent, or to the tenant as profit, or to the occupant proprietor, who stands in the place of both, is the legitimate object of tax in the hands of him who occupies the land." Now, for no one of these several propositions, has the learned gentleman cited any authority. We can only, therefore, refer to the provisions of the statute of Elizabeth, to enable us to test their accuracy; and as, in that statute, there is not one word, which seems to sustain these propositions; and as the general, not to say the universal, usage has ever been to assess occupiers

for the amount of their *bonâ fide* rack-rents, without the addition of any sum for the supposed profits of tenants; and as such a course has received the repeated, we may almost say the continual, approbation of the Court of King's Bench in cases strongly contested, it does appear to me that uninterrupted usage, so sanctioned, affords a much higher authority, in favour of that, as the legal mode of assessment, than the individual opinion of any lawyer, however eminent. If the principle suggested by Mr. Nolan were the true principle of assessment, as applicable to lands, the advantage, thereby afforded to the tithe-owner, would extend equally to the occupiers, or, to speak more correctly, to the recipients of tolls, and all other incorporeal hereditaments; and when it is recollected that the mode of making assessments, in respect of such properties, has been the constant subject of discussion, in the Court of King's Bench, during the last eighty years; and that the most industrious as well as the most acute and ingenious advocates have been generally engaged in such cases,—is it probable, we might almost say is it possible, that if the principle contended for were sustainable by law, there should never have been one attempt to establish such a doctrine, until long after the publication of Mr. Nolan's treatise; and that, even down to the present time, that doctrine

should not have been generally, if ever, acted upon?

After an attentive perusal of the whole of Mr. Nolan's statements on this subject, I am led to the conclusion, that, in the chapter, on which the reverend gentleman relies, the learned author must be considered as rather pointing out what he conceived to be the principle, on which property *ought to be* assessed, than the mode of assessment authorised by the statute of Elizabeth. He speaks of the actual *value* of property as the basis of assessment,—and then ingeniously proposes to increase that value, by first adding the amount of profits, *expected* to be made by a tenant, to the defined value of occupation,—and by again subdividing that value between landlord and tenant, to render each liable to his due proportion of the rate. Now, however equitable such a mode of assessment might be, it is sufficient to say that it is not warranted by the statute. No tax on property or income is therein authorised—no tax on a landlord is therein contemplated—no tax on profits is therein alluded to. The only persons subjected to the charge are inhabitants, parsons, &c., and occupiers, according to their ability. But the learned author had lived in times when a tax on income and property, founded on the basis which he has propounded, had been imposed; and his sugges-

tions seem rather to have been deduced from the provisions of the Income and Property Tax Acts, than from the statute of Elizabeth, or the cases arising under it.

But the firm reliance of the reverend gentleman is on the decision of the Court of King's Bench, in the case of K. *v.* Joddrell—and it is impossible to approach the decision in that case without the greatest diffidence. The high authority of the court, by which the judgment was pronounced, is so imposing, that it may be deemed almost presumptuous to question the principles on which that judgment professes to be founded. It must, however, be borne in mind, that as that case is one of the first impression, no former judicial decision, on the point in question, being therein referred to; and as the judgment, if correct, can only be sustained by the provisions of the statute of Elizabeth, the construction of those provisions is equally open to all;—and that the decisions of the highest courts of law are not unfrequently deemed fit subjects for reconsideration.

The learned Judge, in pronouncing the decision of the court in the case in question, states, "that the *farmer's share of profits* ought to have been rated—or, which is the same thing, that the appellant should have been rated proportionably less—that of the whole *annual profits or value of*

land, a part belongs to the landlord, in the shape of rent, and part to the tenant—and that whenever a rate is according to the rack-rent, it is in effect a rate on part of the profits only,"—"that there was a share of profits received by the tenant upon which there has been no rate, and in that respect the farmers were assessed in a less proportion of the true annual profit than the appellant."

Now the whole of this judgment appears to assume the principle that *value* and *profits* are synonymous; or, in other words, that the only true mode of ascertaining the *value* of land, is by an estimate of the whole amount of *profits* which may be supposed to be made upon the land by the landlord and the occupier;—and that consequently to omit the amount of the profits of either, is to omit a part of the value which ought to be assessed. In considering this judgment, I feel myself bound to contend against this proposition. It is, as it seems to me, the *petitio principii;* and I shall by-and-bye endeavour to show the fallacy on which it proceeds.

If the statute had authorised an assessment on property itself, or imposed a burthen on the owner, as well as on the occupier, in proportion to the profits by each derived therefrom, the principle, on which the court pronounced this judgment, would be perfectly intelligible. Each party, deriving or acquiring income or pro-

fit, would be liable to be assessed in due proportion; and the assessment would properly have respect to every profit made on the land; but, it is submitted, that the statute of Elizabeth does not go to this extent. There is no charge on the land itself—the owner, as such, is not liable to be assessed—no provision is contained in the Act extending, in words, either to rents or profits; but the *occupier*, whether of lands, houses, tithes, mines, or underwoods, is alone liable, *according to his ability*; and no distinction whatever is made, as to the extent of liability, in respect of any description of property. How the occupier of one description of property can be liable to be assessed, *in respect of occupation*, on a different principle, and in a different proportion, from the occupier of property of another description, where the liability of both is created by the same words and provisions, it is not very easy to understand; and to define the ability of the *occupier*, by calculating the value of the profits of the *owner*, as a part of the amount for which the occupier is to be assessed, appears to be adopting a criterion, for measuring the ability of the occupier, which does not seem warranted by the statute of Elizabeth. Had not unvaried usage adopted as a principle the amount of rack-rent, as the *value of occupation*, and the consequent test of the

ability of the occupier, it might have been doubted how far the rent, paid *by* the occupier to the owner, could afford a fair, or indeed any, criterion of the ability of such occupier. As, however, the cases have uniformly decided that the fair *bonâ fide* rack-rent of property is to be taken as the *value of the occupation*, and that such value shall be adopted as the test of the proportionate ability of each occupier, in respect to such occupation, those decisions must now be received as the legal interpretation of the Act; but unless it can be shown that decided cases have prescribed a different mode, for assessing the occupiers of one description of property from those of another, it is submitted that the liability of *all occupiers* must still rest equally on the provisions of the statute of Elizabeth; and that the occupier of a farm cannot be legally charged on a higher or different estimate, for the occupation of his farm, than is allowed to be adopted with respect to property of any other description.

The learned Judge, in delivering the judgment of the court in the case of K. *v.* Joddrell, states that "of the whole of the annual profits, or value of land, a part belongs to the landlord in the shape of *rent*, and part to the tenant." Now, with the greatest deference to the court, I submit that the terms *profits* and *value*, which are here treated as synonymous, are materially different; and that the

treating them as synonymous has led to a fallacy, the exposure of which will go far to overturn the proposition, on which the judgment in question is founded. The *value* of a farm, I submit, is the *value of the occupation* of it, ascertained by a fixed sum, agreed to be paid, or which may be obtained as *rent;* or, in other words, such a sum as a tenant is willing to give *for the occupation*, by which he is afforded the means of employing, beneficially as he supposes, his personal labour and capital,—*the profits* are altogether precarious, not in *esse*, but merely in *posse*—and if ever they are obtained, they arise *wholly* from the tenant's personal labour, and capital employed on the farm.

Now for profits or income, derived from personal labour, the court has invariably held that no inhabitant is liable to be assessed;—and in the only case in which the question, as to the liability of the farmer to be rated in respect of his farming stock, has been raised, (R. *v.* Barking, 2 L. Ray, 1280,) the court expressly decided that a farmer was not liable to be assessed in respect of such stock, though a tradesman was liable to be assessed on account of his stock in trade. If, then, the tenant's profits can only be derived from sources, in respect of which it is universally allowed that he is not liable to be assessed, it would seem a strange anomaly that he, as occupier of a farm, should be held liable to be charged, in anticipation, under the name of *tenant's profits*,

for an income, *expected to be produced*, from those very sources, in respect of which it has been judicially declared that he is not liable to be assessed.

To contend that the expected amount of uncertain profits, which are not *ejusdem generis* with defined rent or value, shall be added to rent or value, in order to render an occupier liable to be rated for the aggregate amount, is a proposition too inequitable to be endured. If an occupier be liable to be assessed, in respect of profits, when combined with rent or value, he must be equally liable to be assessed for such profits *per se*. Now let us consider how in such a case an argument would stand. Suppose A. B., as occupier of Black Acre Farm, is assessed, at the rack-rent paid for the farm as the actual value of occupation. Let the next item be A. B. for profits on that farm. Would not this charge for profits be rejected, as soon as it could be shown that the profits, sought to be charged, were the profits expected to arise from A. B's. *personal labour and capital?* I apprehend that the court would hardly listen to an argument on such a point. But if, by adopting some other view of the subject, the court could be induced to support such a rating, must not the same principle lead equally to the rating C. D. (a banker,) E. F. (a manufacturer,) G. H. (an hotel, or boarding-house keeper,) and J. K. (a blacksmith,) in addition to the charges for rent or value of the pro-

perties in their respective occupations, for the amount of *profits* expected to be derived by each of them from their money—their stock and capital —their provisions and entertainment of customers —and from their personal labour, and the materials employed, provided, or worked up, on the premises occupied by them respectively? Such a result seems to me unavoidable. The case of K. *v.* Birmingham Gas Light Company, 1 B. and C. 506, has expressly decided that the occupier of a manufactory is only to be assessed at the sum for which such manufactory would let to a tenant at an annual rent, and that the profits made therein are not rateable, "any more than a blacksmith's forge would be rateable for anything more than it would let for." The same principle has been recognised in the case of K. *v.* Atwood, 6 B. and C. 277, where the question arose on the profits of a coal-mine—in the case of K. *v.* Trustees of the Duke of Bridgewater, 9 B. and C. 68, in a case respecting the income of a canal, where it is expressly declared that the assessment on the Trustees must be confined to the value of the land in their *occupation* merely; that their *profits* must be thrown out of the question; and that the rent, or sum at which the land will let, *is the criterion of the value of occupation;*— and in the case of K. *v.* Chaplin, 1 B. and Ad. 926, in a question as to tolls, where it is ex-

pressly held that " the sum at which the tolls are actually let being ascertained, renders it unnecessary to speculate on what they are worth, and that a clear rent is the best criterion of value." In all these, and in the numerous other cases where questions have arisen as to the liability of occupiers, of various descriptions of hereditaments, to be rated for the amount of profits, obtained by labour and capital, the court has invariably held that such occupiers are merely liable to be assessed for the amount of profits, arising *naturally* out of the soil, or for machinery affixed to the soil, or let with it; and to such an amount only as the property would let to a tenant, and, in several of these cases, the reason given why occupiers of such properties are liable to be assessed to such an extent only, is *because* the occupiers of farms are only rated (and, as I contend, are only rateable) for the amount of *rent* or *value*, as contradistinguished from *profits*.

Before the decision of K. *v.* Joddrell, I am not aware of any case wherein the court has held that an occupier is rateable in respect of *profits* of a farm. The only profits which seem to have been deemed rateable, *eo nomine*, are profits arising naturally out of land, such as mineral, salt, or other springs of water, profits arising from machines affixed to land, and let with it—profits from tonnage or tolls, arising from the use of land; or,

in other words, the amount for which the land would let, with such advantages incident to it; such a rent being, as declared by the Judges, the *fair criterion of the value of occupation.* In the case of K. *v.* Adams, 4 B. and Ad. 61, the learned Judge, who pronounced the judgment, states that it is quite clear that the rating ought not to be made according to the profit, derived by the occupier, because the cases have decided that all lands ought to be assessed in proportion to the rent which a tenant at rack-rent would pay, he discharging all rates, charges, and outgoings;— and he cites a whole string of cases, in confirmation of that principle, in no one of which, except in the case of K. *v.* Joddrell, is there any sanction given to the assessment of occupiers of land for *profits*, in addition to the amount of the full rack-rent for their farms.

It is true that the same learned Judge who delivered the judgment in K. *v.* Joddrell, has, in the case of K. *v.* Oxford Canal Company, 10 B. and C. 163, stated that in strictness *all profits* ought to be rated; adding, that as tenant's profits, in respect of other lands in the parish, were not rated, the tenant's profits, in respect of lands occupied by the Canal Company, ought not to be rated; but this is, I believe, the only case, except the case of K. *v.* Joddrell, in which the liability of an occupier to be assessed for *tenant's*

profit is adverted to. It was an observation, too, not arising necessarily out of the case then before the court; and highly as the authority of that very learned and accurate Judge is justly estimated, I must yet venture respectfully to advert to the reasons which I have before stated, to induce a reconsideration of this point.

If the grounds, on which the Court of King's Bench decided the case of K. *v.* Joddrell, were the clear result of cases solemnly decided, and upon the authority of which no reasonable doubt could be entertained, no argument, on account of supposed inconvenience, could, with propriety, be urged against such a decision; but, inasmuch as in the judgment in K. *v.* Joddrell no former case is cited; and as the reasoning, on which that judgment proceeds, assumes principles, the acquiescence or non-acquiescence in which is the real point at issue, it may not be deemed improper to urge the *argumentum ab inconvenienti,* as a strong ground for opposing the adoption of the principle contended for. The learned Judge, in delivering the judgment of the court, has expressly stated that the court was well aware that a precise and accurate application of the principle there laid down was *impracticable.* This, it is submitted, is in itself a strong ground for hesitating to adopt it; but when it is considered that the mode of rating, contended for, must, if adopted,

necessarily be the source of perpetual litigation, every reflecting person must be anxious to avoid, if possible, the recognition of such a principle. If farmers, in addition to the amount of their full rack-rents, were to be assessed for the amount of profits, *expected to be derived* from the occupation of their farms, the amount of such supposed profits must be open to question on every new rating; and they would always have it in their power to offer evidence, in diminution or extinction of such amount, on account of disastrous seasons, tempests, or other contingencies. Such fluctuation and uncertainty would be attended with the greatest inconvenience, while the frequent investigations which would thus become necessary, must inevitably produce irritation and cavil; and contradictory statements would be too often attempted to be sustained, by gross misrepresentations, if not by perjury.

In the Property Tax Act, from which the principles suggested by Mr. Nolan, and adopted in the judgment in K. *v.* Joddrell, are in the main derived, this manifest inconvenience was foreseen and avoided; by fixing a certain proportion of rent as the income or profit, supposed to be derived by the tenant, from the occupation of a farm; and if such principles, as are contended for by the reverend author of the pamphlet to which I have alluded, were to be acquiesced in,

it would be infinitely preferable for parliament to assume some specific proportion of rent as the average amount of tenant's profits, than to suffer the calculation to remain open to interminable disputes. For my own part I feel no hesitation in avowing a decided opinion that there is no real ground whatever for the claim which the reverend gentleman has set up; but it is not to be presumed that expectations, formed on the faith of the pamphlet referred to, will be abandoned without a declaration, by the highest authority, that such expectations are not warranted by law. To prevent unpleasant discussions, and to remove all doubt on this subject, I submit that it is expedient to pass a declaratory Act. Whether such Act should originate in the House of Commons, or in the other House of Parliament, where the opinion of the Judges might, if necessary, be obtained, your Lordship will best Judge.

In discussing this subject I have been insensibly led into a more lengthened investigation than I at first intended; but, as the principle, involved in the proposition of the reverend gentleman, appeared to me to be founded on a fallacy, and as he has reflected, in no measured terms, on those who differ from him on the point at issue, I have been anxious to sift the arguments, by which that principle is sought to be established; in the hope that the suggestions, which I have thus ventured

to submit, may tend to the adoption of some legislative measure, for setting at rest a question which, from the language of the reverend gentleman, in the pamphlet alluded to, and from the numerous petitions presented by the Clergy, at the close of the last session of Parliament, appears to have roused a spirit of agitation, which every true friend of the National Church must deprecate and deplore.

I have the honour to be, with sincere respect and esteem,

My Lord,

Your Lordship's very faithful

humble servant,

J. PHILLPOTTS.

Serjeant's Inn, Temple,
25 *October*, 1838.

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THE

TENDENCY OF THE TITHE ACT

CONSIDERED WITH REFERENCE TO THE

CORN-LAW QUESTION.

ACCOMPANIED BY A PLAIN STATEMENT OF THE POINT AT ISSUE WITH RESPECT TO

TITHE-RATE ASSESSMENTS.

BY THE REV. J. SYMONS, M.A., F.L.S.
Rector of Radnage, Bucks, &c.

LONDON:
C. J. G. AND F. RIVINGTON,
ST. PAUL'S CHURCH YARD, AND 9, WATERLOO PLACE.

6*d.*] 1839.

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A SERMON,

Preached in the Parish Church of High Wycombe,
26th May, 1835,
At the Visitation of the Venerable JUSTLY HILL, M. A., Archdeacon of Bucks,
and printed at the request of the Archdeacon, and Clergy present.

Taylor, Printer, 89, Coleman Street.

THE TENDENCY OF THE TITHE ACT, &c.

THE conversion of Tithe property, whether collected in kind or levied by money-composition, into a regular fixed rent-charge, had long been a measure of earnest and anxious desire. To the establishment of some certain and unvarying basis of tithe receipt, freed from either the vexations and harassing care of drawing the portion in kind, or the often disputatious settlement of it by a compounded payment, every friend of the Church could but look with satisfaction and comfort.

The cutting off all motive to possible collision or angry feeling of any sort in an arrangement under either system, yet coupled with a full and perfect security for the payment of such fixed commutation, was a benefit essentially calculated to preserve that harmony of intercourse between a pastor and his flock, by which the successful and efficient exercise of his ministry could be best secured.

As such, it could not but be hailed, as it is hailed, as a great national and public boon. And so, it is trusted, it may prove, by such provision against dangers to the possibility of which, in its nature, it is unhappily exposed, even with all its admitted good. That it undoubtedly must be the desire, not merely of the Clergy themselves, but of all those who respect the established religion of the land, that a sufficient maintenance for its ministers should be *permanently* secured there can be no question. And hence it becomes a matter of the deepest concern to investigate and guard against every circumstance, which may even prospectively endanger or invalidate the security of the Tithe incomes now to be determined.

Would that there were *no* cause for distrust, and that the change could be welcomed as a boon of unmixed benefit, without apprehension of *any* evil to impair its good: but such, unfortunately, is not the case. And it is with a view to the contingency in question that I am chiefly inclined to fulfil my share of the duty we all owe to the Church, to impress on those who are desirous of maintaining her efficiency, the imperative and paramount necessity of defending her legitimate claim to that portion of the income of the Tithe-owners which is now in litigation, and to which I shall have more fully hereafter to advert. It is a necessity, let me most strongly impress it on my readers, rendered the more urgent and more im-

perative at this moment by the present state of feeling on the subject of the Corn Laws.

I. Before entering on the exact bearing which an alteration in the duties restricting the importation of foreign corn must have on Tithe incomes under the new law, I must be allowed to take a summary view of the strength and progress of the anti Corn-law agitation. Disclaiming any intention of entering into the merits of the question either *pro* or *con*, it is, nevertheless, impossible to exaggerate the necessity of fully and dispassionately contemplating the claims put forth by the advocates of repeal, and their possible effect on the present or future governments, as well as the inevitable and disastrous injury of any such alteration at all, to the interests of the Tithe-owners as established by the new Commutation Act.

The strength of their case may be easily stated in a few brief propositions, embodying the anti Corn-law theory advocated by the abolitionists. Their claims, just or unjust, will be seen to be by all parties of a very plausible character, at least on the public mind. And the case, as represented by themselves, stands thus:

"That, whilst the price of wheat, the main staff of life, is, and to all probability is likely to continue to range, between 70*s.* and 80*s.* *per* quarter, few, if any, of the countries of Europe pay more than two-thirds of this price.

"That, whilst all restrictions on commerce are injurious to the general increase of the wealth and capital of the country, a protecting duty on corn is peculiarly so, inasmuch as it has the operation of raising the price of food here, and therefore augmenting the distress of the working classes.

"That whilst it limits the sale of our manufactures to foreigners, forcing them to manufacture for themselves what they would otherwise purchase from *us*, if we would take their corn (the commodity which they can best spare) in return, the claim of the agriculturists to their protecting duty is virtually a claim to be protected in the continuance of the perpetration of a national injury; *viz.* that of forcing the community to subsist on food at one-third higher price than it could be bought for elsewhere.

"That this is enhanced by the fact that, whilst the markets for the produce of our manufactural industry are becoming more and more limited, the population of the United Kingdom is increasing at a rate considerably above 700 *per diem*.

"That the benefit intended by the opening of the ports under the present system is entirely frustrated by the fitful character of these periodical demands on the foreign market, which are seldom met by sufficiently prompt supply to aid the urgent need when it arises, and benefit few persons except those who are lucky enough to have bonded corn."

They state moreover,

"That whilst high prices of corn have been usually attended by a depression of the agricultural interest at large, its prosperity has never been greater than during the five years of low average which preceded the harvest of the year 1837.

"That remunerating price is in point of fact a price high enough to grow corn on land the worst fitted for its production.

"That on the other hand it would be more to the interest of the farmers themselves to produce that alone which the land was best fitted to produce." And, lastly,

"That the fall in the price of grain would be compensated to them by the increased demand of the produce of land laid down in pasture, independent of the enhanced value of all building and mining lands consequent on the increase of manufactures, and of the general capital of the country."

Now, when we consider the weight attached to these opinions by the advocacy of them by so many distinguished persons, both among political economists as well as by the most eminent of our manufacturers, and even by many land-owners themselves, it is impossible to gainsay or deny the influence of such doctrines on the mind of all classes but that of the landed interest. In fact, the repeal of the Corn Laws is, perhaps, the only question on the tapis which enlists in its advocacy the concurrent and cordial support alike of a large portion of the wealth and population of the country.

Having thus briefly exhibited, as I trust, a fair and faithful analysis of the leading views, whether sound or unsound, which are prevalent on the subject, and endeavoured to show at least the possibility of their effective result in altering the Corn Laws, I now proceed to show the effect of such alterations, as bearing on the Tithe interest.

And first, I wish to call the attention of my clerical brethren to the fact that, under the operation of such a principle, not only must any material diminution in the price of grain considerably reduce the amount of their incomes for ever, but fall with a much greater weight of injury upon them, as a body, than upon any other class in the community.

It will be seen, by the above statements of the opponents of the Corn Laws, that considerable stress is laid on the facility with which the agriculturist may compensate to himself much of the loss occasioned by the depreciation of the price of wheat, by laying arable land down in pasture, and by the more profitable production of meat, wool, &c.; and also by the enhanced value they would derive from mines and building lands. The mode by which this compensating value of land is expected to be realized to the *Land-owner* is very clearly stated in the following passages, which I extract from a work entitled "*England and America.*"

"Towards the increase of this effect, also, the growth of raw materials for manufactures, such as timber and wool, instead of the growth of corn, a change which could not but ensue in many cases, if the English were to buy their corn with manufactures, would operate very considerably.

"Capital fixed upon land, as well as, we may add, the unfixed capital of the farmers, would be as valuable as ever. Fifty years ago, this would not have been the case; because at that time the art of producing animal food by tillage had made little progress in England; but at this time, every English farmer knows how to raise meat with the plough. If a demand for animal food—milk, butter, cheese, and meat, should take the place of a demand for home-grown corn, some farmers, no doubt, would convert a portion of their corn-land into meadow; but, considering the great skill of the English in growing artificial food for cattle, and how the power of growing such food would be encreased by the greater number of cattle kept, that is, the greater quantity of manure, a large proportion of the present corn-lands would, it seems inevitable, be used for the growth of turnips, potatoes, beet-root, clover, tares, lucern, and suchlike food for cattle, which can be raised only by the same sort of capital as is used in raising corn, and which, on the score of climate, would be raised with less expence than corn.

"Let us suppose the population and wealth of the country to be doubled; a supposition by no means extravagant, after supposing that the staff of life had been very cheap during one generation. In this case, the extent of roads, though not doubled, would be greatly increased. On many of the new lines of road, as well as on those which exist already, market-towns would be built in spots where, at present, neither manure can be obtained nor produce sold. In the next place, a large proportion of the people called into existence by cheapness of bread, would reside in towns; so that, with double the actual population, the town population would be much more than doubled. In this way, land, which is now of second or third-rate quality in respect to position, to manure, and a market, would become first-rate and second-rate. Thus, also, the extent of land required for producing perishable food, such as milk, fruit, and kitchen vegetables, would be more than twice as much as it is now. And, finally, the demand for pleasure gardens, pleasure grounds, and for building ground, would be more than doubled with the supposed increase of wealth and population. Whatever the increase of wealth and population year by year, all the higher degrees of competition for land would be much more rapidly extended.

"Thus, while a free trade in corn might extend to some land which is of inferior quality for the growth of corn, a superior quality for the growth of other things, not lessening the value of any capital fixed upon land, but rather increasing the power of such capital by spreading a mode of cultivation more suited to the soil and climate of England; while competition for superior natural fertility, and the use of fixed capital, might be rather increased than diminished, the influence of all the higher degrees of competition

would, it seems quite plain, be extended incalculably. The aggregate rental of the country must necessarily increase to the same extent.

"But few landlords could miss reaping some share of the great increase of aggregate rental which, if this view of the subject be correct, must result from a free trade in corn. If so, bread cannot, one should think, be made too cheap, nor be made cheap too soon, for the landlords."

Under the *old* Tithe-system, from such enhanced produce or profit of the land the Tithe-owner would reap a proportionate benefit. And this Mr. Jones admirably remarked to this effect, in his pamphlet on the subject of the Tithe Bill, while in its progress in Parliament.

"In this increasing produce the Tithe-owners have at this moment a legal right to share. In the midst of the movement they are asked by the landholder to abandon that right in his favour; and this on the payment of not the whole, but of something less than the whole, of what, at the day of striking such a bargain, is their due. It would be wasting words to attempt to prove that such a bargain must be one essentially and greatly beneficial to the land-owners as a body; and that to talk simply of its justice is much underrating its character*."

But Mr. Jones here foresees but one half of the evil which, under the circumstances of the times, the new Tithe Act may but too probably entail on the heads of the Clergy. By the operation of that Act the Clergy are henceforth for ever cut off from precisely that portion of the productive value of the land which must, from its character, and from the nature of the soil, be the most securely lucrative, and the least at the mercy of those political changes of which it is impossible to deny the menacing progress.

The farmers may save *themselves* at least from the destruction of their property, and, as it would appear, even from its deterioration, by a change in the application of their productive industry, a resource from which the Clergy under the old law might have retained their legitimate share of benefit. *We* are now however helplessly chained down in a sinking boat. Let the price of grain fall ever so low, from the inundations of continental supply which must quickly follow the repeal of the Corn Laws, the Clergy can claim nothing more than the *unchanged quantity* of bushels at which their tithe is now commuted, not even if the price falls, as it very probably would, to below even one half of its present price. The income of every Tithe-owner in the country must be diminished, if the Act should be allowed to continue in force, as it is, by one-third of its present amount!

* See "Remarks on the Government Bill for the Commutation of Tithe," p. 21, 3d edition.

The fact is, that a part of the produce of the land is menaced by depreciation in its value, and it is precisely upon that portion that the incomes of the Clergy are to be exclusively rested. A certain site is obviously exposed to the current of an impetuous torrent; and it is on this site that the very maintenanee of the Church Establishment is to be now based, having been removed (as it would appear almost for the purpose of being endangered) from its broader and surer foundation on which it has hitherto stood, deriving its support from the entire instead of fractional portions of the land.

It is not in any spirit of regret at the superior and less contingent benefit the land-owner possesses in this great and eventful change in the condition of a large and extended interest, that I would wish to arouse my fellow sharers of the evil that is fast bearing down upon us, to some strenuous and active exertion to stay its impending march. We grudge not, nor would we wish to grudge, the benefit, in the safety and the comfort the new system is calculated to give to the proprietors of the soil from which our incomes are alike derived; but we have a moral and an equitable right to complain of being placed on a footing of such inferior security to them for the maintenance and preservation of our equal right. All we have to ask is, that the same or a similar measure of safety, and insurance for the unbroken integrity of our benefit in the produce of the land with which our forefathers have endowed our Church, and which the legislature has so often sheltered by its protecting ægis, be meted alike to ourselves. But we do protest—strongly protest, and let us not cease to protest, while such an injury overhangs our path, against the bereavement of that security that has hitherto shielded us from the depressing influences of fluctuation and change in the value and produce of the land on which our provision was secured.

As a measure of peace, and as a principle securing us a provision free from the turmoil of constant arrangement, or the risk of collision in adjusting it on every renewal of agreement, we hail it with joy and satisfaction. We hail it as the means of enabling us to pursue our course of pastoral duty, in unbroken appropriation of our time to the spiritual welfare of the souls over which we are appointed to watch: we hail it as a means of enabling us, as our high and holy mission calls us, to be "instant in season and out of season," having no cankering care, no distracting anxieties in temporal arrangement of our provision, to withdraw us from that great charge to which our own hearts and our own souls are devoted, "the care of the Churches," in its best, its happiest, and its most honoured sense.

But in these rejoicing anticipations of the happy effect of the Tithe Commutation as a principle to ensure it, let us not, we ask, be building on a vain and fruitless calculation. If with one hand you give us a substitute for the provision we have so long enjoyed, with the hope and promise of such peaceful advantages of its operation as I have described, do not, we ask, with the other, deprive us of the security for their preservation and continuance. Do not, we ask, expose us to the risk of diminished sources of maintenance without the counteracting means our former resources possessed of remedying the evils which fluctuating produce and varying profits must ever produce.

But the question will hence arise, and it will be naturally put, if such be the evil we apprehend, and so imminent be the danger of it, what are the resources and what the remedy best adapted to avert it?

There are many perhaps who will reply, by a firm resistance of the projects of the Corn-law repealers. To this line of policy, however, I am not altogether inclined to subscribe. I believe that even for the temporal interest of the Church, there is more of peril than safety in the resistance to a measure advocated by a great body of the people, as essential, in their conviction, to their welfare. I fear that the Clergy have alone the option of putting themselves out of the current of the tide, or of being overwhelmed by its torrent.

Opinion once so strongly pronounced as that on the Corn-law question, admits but of very problematical success to those who engage in the arduous task of staying its progress. If a permanent reduction in the price of bread be a salutary measure, it is unchristian to oppose it. If it be not a salutary measure, opposition to it will become any class better than the Clergy, who are bound to shield the spiritual influence of their sacred office from being weakened by that odium which temporal strife of necessity entails upon them, and which can scarcely be attracted in a greater degree than by an active or professional resistance to a measure which the people at least believe to be essential to the continuance of their "daily bread," for which it is our peculiar province to lead our people's prayers to ascend to the throne of grace for the needed supply.

Little, then, can we ask of them to bear the privation to which a high price of corn must raise that bread, in order that by an augmented amount of it the compact may be fulfilled on which our own provision depends. It appears to me that common sense dictates an easier course. If it be not in the power of the Legislature to maintain the high price of grain, it is at least in its power to release the Clergy from the bonds which chain them to its fall.

If tithe be in its origin intended to be proportioned to the produce value of the land, it would appear but reasonable to affix it according to some standard which shall correctly indicate that *entire* value. This I have endeavoured to show the corn rent-charge will not effect.

The simplest check to the money depreciation, which alteration in the Corn-laws would produce, appears to me to be that of *amending the existing Act* by a clause affixing a *minimum* for the standard of prices assumed as the basis of the future payments.

Considering that the "average of the seven years' prices preceding Dec. 31, 1835," includes exceeding low years, such as 1834 and 1835, falling as low as 39*s.* 4*d.* for wheat, and never exceeding 66*s.* 4*d.*, I am not aware that a more equitable standard for a *minimum* could be adopted; for which a proviso to this effect might be inserted in the 67th clause of the Tithe Act.

"And provided further, that such prices shall not fall below the average of the seven years stated in the corn returns made by the order of the House of Commons, Feb. 19th, 1836."

I am firmly persuaded that the respect for the Establishment existing in this country, and a just regard to the principle that "they who wait on should live of the altar" has sufficient weight with the love of justice, even amongst the better class of the Corn-law agitators and the people at large, to prevent them from having any desire that the ministers of religion should be subjected to the risk of a curtailed compensation of their present most moderate source of maintenance. I foresee no opposition of any weight to such a prudential clause prospectively shielding the Tithe-owner from the injury which the sweeping effect of a Corn-law repeal must produce. We do not, I repeat, ask to be put into a better position than the land-owner; we ask only, and surely it is not an unreasonable demand, to be guarded against a loss from which the landed interest has a compensating resource now shut out from the Clergy, to protect him whenever the day of change arrive.

II. And yet, after all, this is not the only danger to which we are exposed, or the only loss our interest has the risk of incurring. No one, into whose hands these few pages will fall, can be unaware of the attempts that have been making since the new Act has commenced its operation, to enforce a new principle of assessing the Tithe Rate, the consequence of which would be a virtual diminution of the compounded amount of the commutation.

In a large proportion of parishes, the ecclesiastical Tithe-owner had been exempted from assessment on his Tithe in virtue of his composition with the occupier. In these cases the composition paid *to him has been* the real value (or the estimated produce) of the Tithe,

minus the sum he would have paid for rates had an assessment been made upon him.

The Tithe Commutation Act has, however, entirely altered this position, by making it imperative (*vide* clause 69) for every owner of rent-charge in future to pay such rate. The question therefore arises, as to what amount and upon what principle this assessment is to be levied for the future, so as to secure the just and full payment, to which as Tithe-owner he was entitled, in gross.

By the practice that had prevailed in those cases where the Tithe-owner had made no such composition, or had made a gross composition, paying his own rate, the fair and equitable system had been constantly acted upon, of putting him on the same footing with the occupier, whose profits had always been exempted from assessment.

There is hardly a doubt that, originally, and for a long time after the Act of 43 Eliz., establishing a levy of rates for the relief of the poor, the Clergy had been even further exempted (as other possessions still are) from any charge upon *professional* profits in determining the rateable liability of tithe.

But this privilege having been long lost, and appeal orders deciding against it whenever claimed, no compensation can now be looked for on *this score*; and hence an onus, unfair and unequal as it is in its operation, is laid on a class of men by taxing their professional labours, who are the least able, in a very preponderating majority of cases, of any persons, to bear the pressure of an aggravated impost.

Yet, at all events, they were not left in *other* respects in an inferior situation, as to rateable exemption, to the land occupiers. The exemption *these* are allowed from assessment on their profits, over and above their rated rack-rent, has been justly reckoned as entitling the Tithe-owners to the same equitable consideration, and which they have accordingly enjoyed. Therefore, wherever the latter (from the circumstance of their tithe arrangements not being made free of rates) had to be assessed, the practice had been to allow their rate a diminution in a ratio equal to the amount of the occupier's estimated profits.

Thus, in the period succeeding the Act of Elizabeth, the Clergy enjoyed two distinct exemptions; the first in virtue of professional labour, the second in virtue of profits on produce. Whatever view may be taken of the equitable right to both these exemptions together, no doubt can be for a moment entertained of the justice of their title to retain the latter, however it may be determined in the pending litigation upon it. For, it must be distinctly understood that the exemption on professional profit having been long lost, it is the profit on produce alone which is now attempted to be wrested

from the income of the Clergy, and which is the point at stake in the decision of the Joddrell cause.

Nor does it appear that this fair and equitable principle was attempted to be destroyed or disturbed till this appeal of an incumbent, in that case, against an assessment rating him on the full income, brought the subject, in the King's Bench, to a clear and direct decision, by which that court established this right by its memorable judgement*.

And yet the principle is in no shape one but what is consistent with the strictest equity. There is neither favour nor partiality in the arrangement; no meting of any measure but what is justly called for by the equal advantage afforded to the rated occupier. While, to judge from the clamour and vituperation which it has excited, it might be supposed that the Tithe-owner, the clerical Tithe-owner being more especially meant, was exacting the demand of some extraordinary advantage in the arrangement, and avariciously grasping at some ulterior benefit in the compact of his commutation, in merely enforcing a just and legal due.

In one case, that of the occupier's profits, you exempt him from burthen on that portion of *his* income; and when you come to the Tithe-owner, instead of measuring by the same rule in his case, you saddle the *entirety* of his receipts with the impost. It is but justice, we maintain, therefore—it is, we conceive, but the simplest distribution of equity—to levy on each alike; or, exempting the one, to act impartially, you ought in equal measure to exonerate the other.

The ground taken by the parochial assessors, and confirmed by the order of the Session, in the case upon which this appeal was made by Mr. Joddrell, was, that "the tenants ought not to be rated for anything beyond the amount of the landlord's rent." Yet, at the same time, they levied a rate on the full amount of the rector's corn rent-charge. The decision of the Court, in annulling this act of injustice, restored the Tithe-owner's before-stated privilege; and it was so decided upon this principle, *viz.* "that the assessors ought to have ascertained the ratio which the rent of land bears to its average annual profit or value, and assess the appellant for his Tithe-rent in the same ratio."

When, therefore, the Tithe Bill passed, confirming the *existing* liability of the Tithe-owner, that Act must be considered as having, *de facto*, made a solemn compact with him, which, in good faith, and upon every principle of common justice, should be held sacred and inviolable. Any departure from the principle upon which the

* An ample detail of this important case, upon which the principle of Tithe-*rate* still hinges, will be found in the second number of the Ecclesiastical Gazette.

Tithe-owner had been customarily assessed, would be nothing less than a positive violation of the terms of the contract itself—a virtual spoliation of one of its express covenants. For that contract, be it remembered, was one by which a body of men had been bound to surrender immunities for the common good, upon conditions of compensation, of which such assessment formed an integral portion.

Such was the sacred regard paid to this compact by the concurrent law of Mr. Scrope's parochial assessment, that it made it an express enactment to secure and protect this very right; and the proviso introduced for this purpose may be, in fact, considered as a renewed pledge of this national compact. Whatever previous right existed was thereby recognized in its fullest integrity, and sheltered, by one of the most cautious provisions that language could well express, from any alteration or infringement of the existing state of the law. "Nothing herein contained shall be construed to alter or affect the principles or different liabilities (if any) according to which different kinds of hereditaments are now by law rateable."

That such was the object proposed in this proviso, *viz.* to secure the right already enjoyed, and to add a confirmatory pledge of its security, is evident from the construction put upon it by the Poor-Law Commissioners themselves. For, in their own circular of instructions to parochial officers for framing the new assessments required by this Act, they positively declare that it is the understood intention of this proviso "to preserve to the Tithe-owner the benefit of the decision in the case of the King *v.* Joddrell." And moreover, their express instruction to the overseers in making their rates is, that "if, after the estimate is made of rateable hereditaments (including the tithe according to the Parochial Assessments Act), there should appear to be a profit accruing to the occupier, of the kind described in the case, as that profit will not be rated under the Act, "*the Tithe-owner would appear to be entitled to a deduction proportionate to that profit!*"

And yet is it in the very teeth of this declaration, in defiance of this high official interpretation of the Act, that we have had assessments upon assessments levied upon Clergy, absolutely depriving them of the right which that official order had directed to be preserved. And, taking advantage of this state of contest and dispute, a Bill was introduced into the House with the *professed* purport of declaring the intention of the preceding Assessment Act, and removing doubts to which its enactment was asserted to have given rise, that would have at once destroyed the Tithe-owner's existing immunity. It could hardly be conceived,—after the clause above adverted to in the Tithe Act, introduced for the very purpose of excluding any alteration or change of the Tithe-owner's existing im-

bilities,—after the new Act, confirming that principle,—and especially after the Commissioners' circular, for directing the execution of that Act, so distinctly recognizing the principle in its fullest integrity,—another Bill should have been devised, designedly to extinguish this principle.

For it was nothing short of this that it could have contemplated, nor was it anything short of this effect that its enactment as a law would have produced. And the law it would have been, in all its unfairness, its oppression and injustice, but for the determined and manly resistance of the injured parties themselves, who rescued our national statutes from the foul blot of so disgraceful an enactment. In defiance of the plain sense, and common grammatical and unsophisticated construction of the proviso of that Act, this purposed Bill declares that "the aforesaid Act should not entitle any hereditaments not producing an occupier's profit in addition to the net annual value, to any deduction in or from rate, on the ground that other hereditaments, producing an occupier's profit, are rated only on the annual value thereof!!!"

In his very luminous and able pamphlet, Mr. Jones has so descriptively qualified this procedure, that one cannot more forcibly convey the sentiment it is naturally calculated to excite in every honest and well-principled mind, than in his own expressive language: "Under the pretence of clearing away doubts as to the proviso in Act 6 and 7 William IV., it is the real purpose of this Bill to repeal all the laws of the realm which interfere with the objects and wishes of the drawer of it." (p. 46). And again, speaking of it in an after paragraph, he adds, "It is a Bill professing to be declaratory, and then declaring, not what the law is, but what that law shall hereafter be, and cleverly knocking down, without notice, all the statutes and judgments which stand in the way of the declaration." And, speaking in reference to the character of this measure, when urged by such powerful numbers on its introduction in the last session, Mr. Goulburn thus honestly appeals to the honour and principle of the House: "Every principle of good faith required them to adhere to that arrangement, and not impose an additional tax upon the Clergy."

To this state would that law, had it passed, have reduced the Tithe-owner's right; and to this state will this right, emperilled as it now is by appeal to judicial interference, be still reduced, if, by firm and unbending resistance, the possessors of the immunity (for such in reality it is) that the law of the land, yet in force, has secured, and which that law has, in one of the most important decisions of its highest tribunal, confirmed to them, do not stand forth for its maintenance and preservation.

A decision, the readers of these pages are well aware, has just taken place in another sessional appeal on the part of the Rev. Mr. Belli of Essex, in direct opposition to this principle, at once nullifying the law as it is exists, and stultifying, if it be sanctioned by ulterior appeal, every preceding decision of the judges of the land. In consequence of this and other pending litigations, a circular has been transmitted by Mr. Jones in his official character to every parish, calling the attention of the Tithe-owners to the subject, in a manner that must lead, it is trusted, to the most valuable results. In the first place it must awaken their attention and arouse those exertions for the maintenance of a threatened right on which its successful defence must mainly depend. The proposition he has suggested of " selecting some one case, which seems best adapted to raise all the questions it is wished to have settled, for trial and subsequent argument in the Queen's Bench," is one of sound judgement, and most likely to bring the mooted question to a decisive and satisfactory settlement. His advice cannot but be hailed, as it ought, as the counsel of a firm and intrepid friend. The proceeding he recommends will, of course, be adopted, and for one, interested in common with my brethren, I cannot but firmly anticipate, without distrust or misgiving, that the decision will be a full and unqualified confirmation of a public right, a right which the law has created, which its decisions have sanctioned, and which that law, without a breach of honour and faith, alien to British legislation, will never, I am persuaded, abrogate.

Thus the evils, by which the incomes of the Clergy are now menaced, are two-fold; First, by the encreased amount of rate-assesment; and, secondly, by the still more effective diminution of a material reduction in the money value of that fixed quantity of grain, which will henceforth constitute the chief incomes of the Clergy. When the various bearings of the Corn question are taken into amount, and the influence of the claims urged and urging with yearly accumulating power for reduction in the duties of foreign grain, I believe there are few well-informed persons, whatever may be their individual wishes on the subject, who will deny that the chances of alteration preponderate over those of retaining the existing law, or by any other means maintaining any thing like the existing prices of grain.

It is moreover matter of no small disadvantage to the spiritual influence of the Clergy, that their interest is to be henceforth identified with what the majority of the people themselves regard as the greatest grievance under which they suffer. The remedy I have suggested may, or may not, meet with the approval of the generality of those affected by the evil. In advocating it, I am, how-

ever, induced to prefer it even to more effectual modes of identifying the interest of the Church with the value of produce; because I am fully impressed with the extreme difficulty of obtaining any change at all, under the existing circumstances of our legislature.

I cannot, however, too strongly urge the necessity of making a determined and unflinching struggle *now* for the *prevention* of an evil which, when it has once taken place, it will be beyond our power to remedy. The Legislature which shall achieve the abolition or even the reduction of the protecting duty on corn, will be, there is reason to presume, but little disposed, and if disposed still less able, *then* to remove the incomes of the Clergy to a safer footing, on the more permanent portion of the value of the land.

Those who value the Established Church, and in enlightened feeling view its vast means of efficiency for the highest good of the country, and the furtherance and promotion of the best and dearest interests of a Christian community, can never hesitate to lend their best aid to ensure the preservation of the means which have been provided for accomplishing this great and valuable purpose. In appealing to persons of such dispositions, the friends—I may say zealous friends—of this national institution, I implicitly trust that I shall not be making a vain or fruitless appeal on them for their strenuous and ardent exertions in our cause. They are large in number, very many of them high in influence and consideration, co-operating with masses pervading all ranks of society, alike earnest and zealous in their love and attachment to the church of their fathers. Such, we firmly confide, will neither wish or submit to see the comfort or the independence of a body emperilled, who minister alike to the high and the lowly, carrying the gladdening, gentle, and joyous spirit of Christianity, with the kindly influences of charity and sympathy, to the hearths and homes of the poor,—the Ministry who have brought them into the Church, at their baptism, in infancy,—the Ministry who have blessed the parents of their offspring in the hallowed sanction of their marriages,—the Ministry who have to soothe and solace its members with the sweet and peaceful hopes and consolations of the Saviour's Gospel, at the hour that shall carry them into His Presence, and to the kingdom of his glory.

FINIS.

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